REGULAR CASES.

JANUARY,

1859.

CASES

IN THE

NIZAMUT ADAWLUT.

VOL. IX.

REGULAR CASES.

JANUARY 1859.

PRESENT:

B. J. COLVIN AND A. SCONCE, ESQS., *Judges*, AND
C. B. TREVOR, ESQ., *Officiating Judge.*

GOVERNMENT

versus

ADAWLUT SHEIKH (No. 11,) AND HAZAREE SHEIKH (No. 12.)

Moorsheda-bad.

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Case of ADAWLUT SHEIKH and another.

Prisoners released; 1st inasmuch as the approver witnesses state that the particular dacoity with which the prisoners stand charged was committed by a gang of which Ruheem Allee was Sir-

CRIME CHARGED.—1st count, dacoity on the night of the 24th January, 1846, in the house of Rowshun Mundul of Hurreepoor, thannah Mehirpoor, zillah Nuddea; 2nd count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Baboo Hemchunder Kur, Deputy Magistrate under the Dacoity Commissioner stationed at Moorshedabad.

Tried before Mr. J. E. S. Lillie, Additional Sessions Judge of Hooghly, on the 17th June, 1858.

Remarks by the Additional Sessions Judge.—The two prisoners are implicated in the dacoity with which they are charged, by two approver witnesses;* and witnesses Nos. 3 and 4 depose that they recognized the two prisoners among the dacoits on the night of the occurrence. The record† shows that these witnesses, at the time of the occurrence, deposed to the fact of

* Witness No. 1, Bholye Sheikh,
,, ,, 2, Minoo Sheikh.

† Nuthee No. 11, pages 38, 71 and 73.

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dar, and in the confession of Ruheem Allee himself, this dacoity is not mentioned; and 2nd, inasmuch as the statements of the same approvers given before the dacoity Commissioner and the Sessions Judge, are as to names, greatly discrepant and as the statements of one approver in the same particular, differ greatly from those of the other approver.

recognition both before the darogah and before the Magistrate. The record further shows that approver witness No. 1, was seized in the act; that he confessed* on the following day when the darogah came to the spot, criminating the two prisoners; and that he was committed† to the Sessions (where he was convicted and sentenced.)‡ The record has now been traced in consequence of the confession before the committing officer of approver witness No. 1.

* Page 22.

† Page 2.

‡ Report of Mohafiz of Moorshedabad Magistrate, dated 26th December, 1857.

Prisoner No. 11, in his defence before the Deputy Magistrate stated that approver witness No. 1, was seized in a dacoity (1st count) in the house of his, prisoner's cousin's father-in-law, by his, prisoner's, brother-in-law. In this count he repeats the above assertion, but calls the owner of the house the uncle of his brother-in-law. He adds that he gave evidence against approver witness No 1, in a complaint preferred to the zemindars, which caused that witness to be beaten and driven out of the village. Witnesses Nos. 5 to 7, depose favorably of the prisoner's character; but the former made a different statement before the Deputy Magistrate; and the two latter are adopted relations of the prisoner. There is no proof of the prisoner's alleged connection with the owner of the plundered house; it is not in any way supported by the record; but on the contrary the evidence§ of the latter before the Magistrate affords strong presumption that the allegation is false. The defence of prisoner No. 12, before the Deputy Magistrate and in this Court is, that he and his fellow-villagers caused approver witness No. 1, to be driven out of the village. He affirms that there is a discrepancy in the present and former depositions of witnesses Nos. 3 and 4, with respect to the opportunities they had of being acquainted with him; but a collation of those depositions will show that there is no such discrepancy. Witnesses Nos. 8 to 10, depose that the prisoner came to reside in their village about a year ago, and that during that period they had seen nothing bad in him.

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I consider that the first count is proved. The evidence of the approver witnesses is accordant and probable, and it has been satisfactorily confirmed.

I convict the two prisoners of the crime of dacoity, and sentence them to be imprisoned for twelve (12) years with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin, A. Sconce and C. B. Trevor.)

Mr. B. J. Colvin.—The prisoners now before us, were charged with this dacoity just after its occurrence on 24th January,

1846, but were released by the Magistrate for want of proof. They were implicated in the thaunah confession of witness No. 1, recorded 26th January, which confession, besides that it was no proof against them, was disavowed before the Magistrate. On the following day the prisoners were, however, recognized by witnesses Nos. 3 and 4, who had deposed to the fact of recognition in 1846; and the prosecutor before the Magistrate deposed that they had at the very time told him of their recognition of the prisoners; but this evidence was considered insufficient; and the prisoners were not committed for trial. We are not bound by the view the Magistrate then took of the evidence of witnesses Nos. 3 and 4; but still if not supported by further proof, we may hesitate to consider it more credible now than it was then. In addition to it we have now the depositions of approvers Nos. 1 and 2, which are legal evidence; and the question simply is, are they trustworthy or not? To test their evidence, as they have stated that Ruheem Allee Sirdar was in this dacoity with them, his original confession having been sent for, it has been found that he has not mentioned it as amongst those in which he was engaged; but I do not see that this circumstance invalidates the evidence of the present approvers against the prisoners now before us. There is no doubt of the presence of approver No. 1 in the dacoity, for he was seized in the act, and sentenced for the crime; and as his denouncement of the prisoners tallies with what has been consistently deposed to by witnesses Nos. 3 and 4, his evidence may well, I think, be believed. Witness No. 1, has also mentioned witness No. 2, as present who has, in his turn, implicated witness No. 1. The evidence of No. 2, against the prisoners is also corroborated by that of witnesses Nos. 3 and 4; while their evidence is again corroborated by that of the approvers and may therefore be now accepted, although deemed insufficient before. The prisoners also, although they allege ground of enmity against witness No. 1, do not ascribe any hostile motives to witness No. 2.

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I reject the prisoners' appeal.

Mr. A. Sconce.—These two prisoners have been convicted of committing a dacoity in the house of Ruheem Mundul of Mouzah Hareepore in the month of January, 1846.

When this crime was being perpetrated, one Bholaye Sheikh was seized and afterwards convicted.

In the statement made by him to the police, after the seizure, Bholaye said that Hazaree Sheikh sent for him, to his house; that Adawlut and Amee came too; and that going on, they were joined by six others, and then proceeded to commit the dacoity.

Before the Magistrate he retracted this confession.

Two neighbours of Roshun, namely Beekul and Anund professed to have recognized Hazaree and Adawlut when the occur-

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rence was going on; but the charge against these two men was not then carried out. Now however Bholaye has become an approver; and to him, being added one Meenoo Sheikh also an approver, Adawlut Sheikh and Hazaree Sheikh are brought to trial.

Against the prisoners, then, we have the evidence of Bholaye and Meenoo; also of the two neighbours, Beekul and Anund; and the prisoners have been convicted by the Sessions Judge.

Possibly the prisoners may have been concerned in this dacoity; but it seems to me that no reliance can be placed on the statements of the approvers, and therefore I would acquit the prisoners.

At the trial both approvers say that the dacoits concerned belonged to the gangs of Ruheem Allee and Meenoo (one of the approvers) and both say that Ruheem Allee was personally present.

Already I have seen several cases in which Ruheem Allee and persons professing to have done dacoity with him, have appeared as approvers or have delivered confessions. For the reasons given by me in my note of the 27th September last, on the trials of Manick Sheikh and Malee Sheikh, the statements made by Ruheem Allee and his associates indicated as I thought conspiracy and falsehood; and seeing that the approvers used at the present trial named Ruheem Allee as a prominent party in the dacoity charged, it appeared desirable to have before us any confessions which Ruheem Allee may have delivered in the same matter. Ruheem Allee, we knew, was an approver of earlier date than either Bholaye or Meenoo. But I had found, as shewn in the note just quoted, that Ruheem Allee's earlier statements were improved upon by subsequent approvers and that the latter were used as evidence instead of the former.

Accordingly for the purpose of check and corroboration the confession delivered by Ruheem Allee was called for. This document has been received: but Ruheem Allee is silent as to the dacoity committed in the house of Roshun Mundul.

Of the two approvers brought up as witnesses on the present trial, Meenoo, as I have said, is one. Now Meenoo himself was tried for the same dacoity; and being convicted of belonging to a gang of dacoits by this Court on the 7th April last, was sentenced to imprisonment for life. Meenoo pleaded guilty, but at his trial, Bholaye Sheikh alone gave evidence upon the specific charge of dacoity committed in the house of Roshun, while Ruheem Allee was adduced merely to prove the general charge of the prisoners belonging to a gang of dacoits. Clearly, the committing officer did not expect him to give evidence as to the dacoity under trial, but I see in his deposition before the Sessions Judge, Ruheem Allee said generally, that the prisoner joined him in the dacoities committed in the houses of Gobind

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Biswas of Judagacha, of a Musalman of Hareepore, and of a Hindoo in Hoomajpore. Beyond this, no question was put by the Sessions Judge and we may only conjecture that by the description Musalman of Hareepore, the approver meant Roshun.

It seems to me that we cannot countenance evidence constructed in this manner. Bholaye's first confessions were recorded in December, 1857, Meenoo's in January, 1858; Ruheem Allee's a year earlier, that is in January, 1857; but Ruheem Allee then or up to the commitment of Meenoo in February, 1858, made no disclosure of his connexion with a dacoity in which he is said by Bholaye and Meenoo to have taken so prominent a part.

Lastly, I remark that neither Meenoo, nor Ruheem Allee, nor many others now named by Bholaye were named by him in his confessions of 1846; and that he and Meenoo differ with themselves and with each other in the several enumerations given in by them of their associates in this dacoity.

I would acquit the prisoners.

Mr. C. B. Trevor.—The prisoners Nos. 11 and 12, Adawlut Sheikh and Hazaree Sheikh, were committed to the Sessions Judge on two counts, first, with having committed a dacoity on the night of the 24th January, 1846, corresponding with the 12th Magh, 1252, in the house of Roshun Mundul of Hareepore, thannah Meerpore, zillah Nuddea, and secondly, with belonging to a gang of dacoits.

The Sessions Judge convicted the two prisoners of the crime of dacoity and sentenced them each, to be imprisoned for twelve years with labor in irons in banishment. From this sentence both the prisoners have appealed.

It appears that at the time of the occurrence of the dacoity in the house of Roshun Mundul, the approver witness No. 1, was captured in the act; he confessed on the following day before the police; a confession which was repudiated by him before the Magistrate; mentioning the name of the prisoners amongst those who had with him committed the dacoity. The approver No. 1, was convicted and sentenced to seven years' imprisonment with labor in irons. The charge, however, against the prisoners broke down, and they were not committed to the Sessions, though witnesses Nos. 3 and 4, Beekul and Anund Sheikh deposed to having recognized them at the time of the dacoity.

The present charge against the prisoners is alleged to be substantiated by the evidence of the two approver witnesses, Bholaye and Meenoo Sheikh, and that of the two witnesses, who, when the case was first investigated, deposed to having recognized the prisoners.

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In his mofussil confession made at the time of the occurrence of the dacoity, the approver No. 1, did not give the name of approver No. 2; he only mentioned the names of the prisoners at the bar, Ameer Sheikh and Mulung Khan, five others were with the dacoits whose names he did not know.

In his original confession before the dacoity Commissioner, he gave the name of approver No. 2, Meenoo, Ruheem Allee Sheikh, Rajkisto Bania, Biraj Sheikh, Durbesh Sheikh, Sekunder Sheikh, Manik Sheikh, Nundee Sheikh, Gopi Sheikh, Chotamanik Sheikh, Golamee Sheikh, Madub Ghose, Khoderam Ghose, Nubi Sheikh, Adawlut Sheikh, Hazaree Sheikh, Ameer Mundul, Gopal Mundul and Kalachand Mochi and two Golam Sheikhs, altogether of twenty persons exclusive of himself as constituting the gang committing the dacoity in the house of Roshun.

On the present trial he states that Ruheem Allee's and Meenoo's gang committed the dacoity, that the only persons whom he remembers as being present were Ruheem Allee, Meenoo, Ramkisto, Dhunnoo, Golamee Sheikh, the prisoners at the bar, Ameer Sheikh, Andaree Ghose, Nubi Sheikh and Chunder Ghose.

On collating these three confessions it will be observed that in the second the witness mentions various names, in number twenty; eight of those only does he give in his evidence before the Sessions Judge, adding two new names, Andaree and Chunder Ghose; whereas in the mofussil immediately after the occurrence he was only able to name *four* accomplices.

Evidence such as this, so discrepant with itself, cannot be relied on, notwithstanding that a few of the same names occur in each statement. The intrinsic worth of approver's testimony is satisfactorily to be tested by a comparison of the various statements made by them; in other words by noting the various points on which they agree as also those on which they disagree, and as a *general* agreement in names as well as other particulars renders it trustworthy, in like manner a material disagreement as to names such as to be found in the present instance renders it unworthy of any credit.

Turning then to the original confession of approver witness No. 2, Meenoo, it appears that he gave as his accomplices in the dacoity in Roshun Mundul's house, and as belonging to Bholaye Sheikh's gang, the names of Adawlut Sheikh and Hazaree Sheikh the prisoners at the bar Amanuth Sheikh, Ruheem Allee Sheikh, Gopal Mundul, Boli Sheikh, Andaree Ghose, Manik Sheikh, Sekunder Sheikh, Biraj Sheikh, Gopi Sheikh, Madub Ghose, Nubi Sheikh, Golamee Sheikh, Chunder Ghose, Rajkissen Dhunia, Teencowree, Golamee Sheikh No. 2, eighteen persons altogether exclusive of himself.

In his evidence on this trial he names as concerned in the dacoity in Roshun Mundul's house and as belonging to Ruheem

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Allee's and his own gang, Adawlut Sheikh and Hazaree Sheikh, Ruheem Allee, Bholaye Sheikh, Andaree Ghose, Nundnarain Ghose, Kedoo Sheikh, Teencowree Ghose and others whose names he does not remember.

Collating these two statements together we find eighteen names given in the first, and eight in the second; and of these eight, two are new names; discrepancies such as these in two statements made within an interval of only six months between them, are such as to deprive them of all credit.

But the inconsistencies do not stop here. In addition to the discrepancies existing in the different statements of the same witnesses, those witnesses also in the mention of names differ with each other. Bholaye Sheikh gave eight names in his original confession not given by Meenoo Sheikh, in his; and Meenoo gives four names not mentioned by Bholaye. Again, looking to the statement given by both the approvers, before the Sessions Judge, it will be observed that their different statements only agree as regards four of the persons named by them. Making every allowance for imperfection of memory, arising from lapse of time or other cause, discrepancies to such an extent remain, that no reliance can be placed on such testimony.

Such being the results of an analysis of the evidence of the two chief approver witnesses in the case, it becomes unnecessary to look to minor difficulties in the evidence. I would observe, however, that the fact that Ruheem Allee omitted all notice of the dacoity in Roshun Mundul's house in his original confession before the dacoity Commissioner, though it would only, to a degree, detract from the credibility of the evidence of these approvers, were their statements consistent in all other particulars, still when the statements of both show the glaring discrepancies as to names noted above, an omission of that nature in the confession of a person alleged to have been the Sirdar of the gang committing the dacoity, lends great and fatal force to the other consideration on which the non-credibility of the evidence has been based.

Altogether it seems to me then that the evidence of two approvers cannot be relied on; and as the evidence of the two eye-witnesses are alone insufficient for conviction, I agree with Mr. Sconce in thinking that the prisoners are entitled to an acquittal, and their immediate release.

PRESENT:

J. H. PATTON, Esq., *Judge*, AND D. I. MONEY, Esq., *Officiating Judge*.

THE QUEEN AND BUNGSHEE DOSS MUDUCK

versus

SITTANATH GHOSE (No. 27,) AND RAMCHURN GHOSE (No. 28.)

East Burdwan.

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The prisoner, convicted upon violent presumption of being an accomplice in the murder of the deceased for the sake of his ornaments, was sentenced to transportation for life. The Court remarked regarding a prisoner in the same case, whom the Sessions Judge had convicted of privity to the murder and sentenced, that inasmuch as it is a charge connected with the principal offence, he should in every such instance submit the *whole* case for the consideration of the Court, in order that

CRIME CHARGED.—1st count, wilful murder of Pearee Chokerah for the sake of his ornaments; 2nd count, being accessaries after the fact of the above murder; 3rd count, privity to the above murder; 4th count, stealing from the person of Pearee Chokerah, three gold *mandoolees* worth Rs. 7; 5th count, being accessaries after the fact of the above theft; 6th count, having in their possession property acquired by the above theft well knowing it to have been so acquired.

Committing Officer.—Mr. H. B. Lawford, Magistrate of East Burdwan.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of East Burdwan, on the 29th December, 1858.

Remarks by the Officiating Sessions Judge.—The prisoners plead *not guilty*.

It appears, from the deposition of the prosecutor, that his son, the deceased Pearee Chokerah, a child of about six years of age, went out on the afternoon of the 8th Assin last, to play with other children, having on his person at the time gold ornaments. That, as he did not return in the evening, the prosecutor went out to look for him. His search was, however, in vain. He continued to search for the child on the following day, 9th Assin, with the same want of success, and not finding him, and suspecting that he had met with foul play, he, on the afternoon of the 10th Assin, informed the village gomastah that the child was missing. Intimation was thereupon sent to the thannah, by the gomastah, and, on further search being made for the child its body was found near the field of one Teencowree Ghose, adjoining the Moochtank, and from the appearances which it presented, it was evident that the child had been strangled. The prosecutor further found that the gold ornaments which had been worn by his son were missing from the body. The prosecutor did not suspect any one in particular of having committed the murder.

Wit. No. 1, Umbicachurn Mundul.
" " 2, Shadoochurn Ghose.

The police darogah reached the scene of the occurrence, which is about seven miles from the thannah, on the morning of

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the 11th Assin, (26th September,) and, from enquiries made by him, it appeared that the deceased child had been playing with the witness No. 14,* Lukhee Chokree, an intelligent girl of six years of age, and who has been examined before this Court on simple affirmation under Section 15, Act II. of 1855; that, while they were playing together, he was enticed away by one Cheeneebas Ghose, who said he would give him some sugar-cane, and that on her wanting to go also, Cheeneebas prevented her doing so, by saying that there were jackals in the plain.

* Wit. No. 14, Lukhee Chokree.

it might pass sentence upon all the prisoners. See circular order No. 32, W. P. 5th November, 1849.

Cheeneebas was upon this arrested, and upon the following day, 27th September, he made a confession before the Darogah of complicity in the theft with murder, implicating the prisoner No. 28, who is his uncle, as the actual murderer, and the prisoner No. 27, who is his cousin, (and who has been punished without reference to the Nizamut,) as having been privy to the crime. This confession, he repeated, with additions before the Magistrate, on the 29th September, and on the 6th October he made his escape from the *hajut* guard, and has not since been recaptured.

The prisoner No. 27, Seetanath Ghose, on being arrested in consequence of his having been implicated in Cheeneebas' confession, admitted before the darogah, in a confession made by him on the 27th September, that he had witnessed the murder, which was effected in Cheeneebas' field. That Cheeneebas and the prisoner No. 28, subsequently concealed the body by throwing some earth over it, and that he (prisoner) had had one of the *mandoolees* made over to him as his share of the booty, on the understanding that he was not to make any mention to any one of what had occurred. This confession has been duly attested.†

In the confession made by the prisoner No. 27, before the Magistrate on the 29th of September, and which has also been duly verified,‡ he implicates the prisoner No. 28, and Cheeneebas Ghose as having jointly committed the murder. The confession as regards the prisoner himself is one of privity. He admits having received one of the *mandoolees* from Cheeneebas and being warned by him and by prisoner No. 28, that he was not to tell any one what he had seen.

† Wit. No. 1, Umbicachurn Mundul.
" " 2, Shadoochurn Ghose.

‡ Wit. No. 7, Khoorshed Mahomed.
" " 8, Sheikh Neamutoolah.

On the prisoner No. 28 being arrested by the Darogah, he at first denied all knowledge of the crime, and he had journeyed some distance, about one *coss*, on his way towards the sudder station, when he told the persons who were with him, that he had something which he wished to reveal to the Darogah. He

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was accordingly taken back to the Darogah, and, in the confession* made by him before that officer, on the 29th September, he admitted having heard from Cheeneebas, *after* the murder had been committed, of his, Cheeneebas, having been the murderer, and that he had concealed the *mandoolees* in a *khur* field. On going with the Darogah he pointed out the ornaments concealed in the field in question tied up in some sugar cane leaves. The ornaments† have been duly deposed to as being those worn by the deceased.

* Wit. No. 3. Hurree Mundul.
„ „ 4 Locknath Dutt.

† Wit. No. 13, Mudhoosoodun Ghose.

When brought before the Magistrate, the prisoner No. 28, made a confession,‡ which has been duly attested, to the effect that he had one day been told by Cheeneebas that he had, two days before committed a crime, and, on his asking Cheeneebas what it was, the latter shewed him the *mandoolees*, and upon seeing them and knowing them to have belonged to deceased he suspected that Cheeneebas had murdered the deceased. That Cheeneebas then told him that he wanted to throw away the *mandoolees*, upon which he, at Cheeneebas' request, went with him, and they concealed them in the *khur* field, where he, prisoner No. 28, afterwards pointed them out to the Darogah.

‡ Wit. No. 8, Sheikh Neamutoolah.
„ „ 9, Gholam Abbas.

Before this Court, both the prisoners deny the charges on which they stand committed. The prisoner No. 27, says he was beaten in the mofussil, and, in consequence, stated what he did before the police, and that he repeated the confession made by him before the Magistrate owing to threats having been held out to him. He calls no witnesses. The prisoner No 28, denies having made any admissions either before the police or before the Magistrate. He declines examining the two witnesses cited by him for his defence.

The Jury, Baboos Bungsheedhur Mullick, Brijnath Chowdhree and Ramdhun Mookerjea, convict the prisoners on the 3rd, 4th and 6th counts of the indictment. (Privity to murder, theft from the person of the deceased, and knowingly receiving the stolen property.)

I convict the prisoner No. 27, Seetanath Ghose on the strength of his own confessions of privity to murder only; the admission made by him, to the effect that he had received one of the stolen *mandoolees* as the price of his keeping silence, not being borne out by the subsequent search made by the police in consequence of that admission.

I sentence him to five years' imprisonment with labor in irons.

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In regard to the prisoner No. 28, Ramchurn Ghose, I am of opinion that very strong suspicion rests on him of having been an actual accomplice in the murder. The confessions made by him, corroborated as they are by the very significant fact of his having been the person who pointed out the stolen property to the police, do not, however, bring home to him any higher crimes than those of accessaryship after the fact in theft with murder, and receiving stolen property knowing it to have been acquired by theft with murder.

I would accordingly recommend that the prisoner No. 28, Ramchurn Ghose be imprisoned for ten years with labor and irons, in banishment.

The conduct of the police Darogah in the investigation of this case is deserving of favorable notice. The escape of the defendant Cheeneebas Ghose is much to be regretted.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and D. I. Money.) The Sessions Judge has correctly stated the particulars of this case, and his finding is borne out by the circumstantial evidence. But we think that evidence, taking all the connecting links together, raises a violent presumption of a higher degree of criminality in the prisoner for his share in the transaction than that of which he has convicted him.

The deceased child was *last* seen in company with Cheeneebas, who was arrested in consequence, and, after making a confession in which he implicated the prisoner before us as the murderer, escaped from the guard placed over him. This confession we cannot accept as evidence against the prisoner. But it is also in evidence that the prisoner was working together with his son Seetanath Ghose in the *same* sugarcane field, towards which the murdered child was enticed by Cheeneebas. In his own confession before the Darogah the prisoner states, that Cheeneebas had told him that he, Cheeneebas, had committed the murder, and had concealed the ornaments (taken from the child's person) in a *khur* field. The prisoner takes the police to the spot where they were concealed and points them out, tied up in some sugarcane leaves. In his confession before the Magistrate the prisoner attempts in some degree to lessen the guilt of his own share in the transaction by stating, that Cheeneebas had told him that he had committed a crime, and that upon his, Cheeneebas', producing the ornaments he *suspected* that he had murdered the deceased. He adds, however, that he went at *the request* of Cheeneebas to the field, where they concealed the ornaments, and that he the prisoner afterwards pointed them out to the police. Cheeneebas was the prisoner's nephew, and connecting the prisoner's presence with his son in the sugarcane field to which Cheeneebas had enticed the child, and where he was murdered evidently for the

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sake of the ornaments which were taken from his person, with his, the prisoner's knowledge, as he admits, of the murder having been committed by Cheeneebas, and with his concealment of those ornaments and their production by him, we can come to no other conclusion, upon violent presumption, than that he was an accomplice in the act. The confession of Seetanath, the son of Ramchurn, whom the Sessions Judge has convicted of privity and sentenced is on the record duly attested, and implicates the latter as jointly committing the murder with Cheeneebas. This confession in like manner as that of Cheeneebas, is not evidence against the prisoner, but we are doubtful from the admission contained in it, viz. that he, Seetanath, witnessed the perpetration of the murder by these two jointly and the concealment by them of the body, and from his keeping the murder secret, whether he too might not on violent presumption have been convicted as an accomplice. There is not, we believe, any law rendering it incumbent on the Judge to refer to this Court, the trial of a prisoner whom he may convict only of privity, but it would, we think, in every instance be safer to submit the whole case for the consideration of this Court, in order that it may pass sentence upon all the prisoners on trial. There are obvious reasons for the propriety of such a course. The Sessions Judge might convict a prisoner of privity to a murder, and pass sentence upon him, referring the trial of the principals to this Court, and this Court might find no murder was committed. The course suggested, and which will be submitted for the opinion of the Court at large, would ensure uniformity of trial and obviate inequality of punishment.

Taking the view we do of the circumstances and the whole evidence in this case, we convict the prisoner upon violent presumption of being an accomplice in the murder of the deceased Pearee Chokrah for the sake of his ornaments and sentence him to transportation for life.

PRESENT:

C. B. TREVOR AND H. V. BAYLEY, Esqs.,
Officiating Judges.

GOVERNMENT AND RUTTO BEWA
versus
RECABDI GHAZI.

Jessore.

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Case of RECABDI GHAZI.

Held that in cases of murder, in which the evidence is purely circumstantial, the whole conduct of the party charged, must be taken into consideration in estimating the weight to be given to the sum of the facts in evidence before the Court, and false statement made by him regarding the death of the party with whose murder he stands charged, become inculpatory as showing that he has done something requiring concealment.

On the whole evidence the found guilty of the wilful mur-

CRIME CHARGED.—Wilful murder of Gouri Bebee on the 19th of July, 1858, corresponding with the 4th of Sraban 1265, B. S.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Judge of Jessore, on the 22nd December, 1858.

Remarks by the Officiating Sessions Judge.—This case was reported on in the original trial as one of culpable homicide, but it has this day been re-tried in pursuance of the directions contained in the Court's letter* dated the 9th of October last, (Present: Messrs. C. B. Trevor and H. V. Bayley.) The witnesses were all re-examined in detail and gave the same evidence as on the former trial, though in one or two instances less fully, owing, naturally, to mere lapse of time. No new striking facts were elicited and nothing discordant appeared in the evidence, which is as follows. The prosecutrix is the mother of the deceased, but beyond deposing that the prisoner is naturally of a violent temper and is always quarrelling with his wife, she throws no light on the actual circumstances of death.

The evidence to the fact of beating is that of witnesses Nos. 1 to 6. They agree in stating that the prisoner returned from work about twelve o'clock in the day when he had a quarrel with his wife because she had not got his meal ready; that he beat her on the back and held her down forcibly, whereupon she cried out; that the daughter of the deceased, a young girl of about eight or nine, came up and assisted her mother after the prisoner had left her; that the deceased remained in a weak state all that day, and that next morning they heard that she was dead; and that the prisoner is naturally very hot-tempered. Most of the witnesses were working at the earthern-floor of the house belonging to witness No. 5, Gopal Sirdar, and were in a position to hear and see what passed. Their evidence tallies and is trustworthy, but it is remarkable that they all speak of the beating as much slighter than it is incontestibly

* Vide Nizamut Summary Reports for October, 1858, pp. 483-487.

1859. proved to have been, as the deposition of the Civil Assistant Surgeon will show.

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...der of his wife Gouri Bebee and sentenced, under all the circumstances of the case, to imprisonment for life in transportation beyond seas.

The little girl Sullabhi, daughter of the deceased, who on the last occasion had refused to say any thing save that her mother died from hanging, now admits that her father struck the deceased. She was never at any time examined on oath. The evidence of the Civil Assistant Surgeon shows that the beating must have been severe, bruises and extravasated blood being found on the scalp, back, neck, loins, and even on the abdomen and knees. Considerable force must have been exerted and, in all probability, some stick or blunt weapon was employed. But this beating, though more severe than the witnesses would make out, was not sufficient to cause death, which was caused by pressure on the windpipe, the face and eyes presenting all these appearances which usually result from strangulation, though there was not a trace of a rope outside the neck, nor had the tongue protruded, as it would have done had the woman hung herself. The woman was quite healthy otherwise, and there was no trace of disease about her such as the prisoner hinted at before the police or the Magistrate. The witnesses to the *sooruthal* also speak to the marks of severe beating. But the medical evidence is obviously of the greatest importance in a case like this.

Witnesses Nos. 12 to 16, saw the deceased, towards evening, lying in a very weak state, and heard, either from herself or from the little girl No. 7, that the prisoner had beaten her because his rice was not ready. Witness No. 13, who lives near heard the woman calling her second child in the night to give it suck, but nothing has transpired through any witness as to what the prisoner may or may not have done during the night. Witnesses Nos 17 to 19 heard the prisoner admit to the chowkeedar that he had beaten his wife, but beg this functionary to save him, and to say that the deceased had committed suicide.

The prisoner, before the Sessions, admitted that he had struck his wife once, but said that she had afterwards hung herself for shame and that ants had produced the appearances seen in the corpse, which is simply impossible. He called no witnesses on this occasion, saying that he required none.

The chowkeedar of the village reported the death as one of suicide by hanging, though he admitted that he came away rather in a hurry and did not look to see if there were marks outside the neck. When the mohurrir went to the village he found one party asserting the death to be caused by beating, and another imputing it to suicide. But it is quite clear that he was then unable to obtain proofs of either assertion, and the Darogah, in the final report, said that he could get no eye-witnesses to the beating, which, from the marks, he fully believed

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to have taken place. On this, the Magistrate deputed the Moulavi to investigate the case, and on his arrival the eye-witnesses, who admit that they had kept out of the way through fear, came forward and deposed to what they had seen.

There is not a shadow of proof that the woman committed suicide. The medical evidence precludes any idea of the sort, and there is no evidence that the woman was found or seen hanging by any one, while it is quite impossible that a woman in the weak state she was seen in by credible witnesses could have hung herself, especially in the small cooking shed where the prisoner dragged her.

There is direct evidence to the beating, though the witnesses speak of it as slighter than it really was. Witness No. 1, Koresh Mahommed, expressly states that the prisoner called him early and told him of the death, when the witness went and saw the body, and the prisoner at that time invented a story of suicide by hanging.

I agree with the remark made by the Magistrate that the eye-witnesses have not deposed to the full extent of the beating, and I must assume, on the facts proved, that something more, not actually in evidence, did take place during the night of which no witness is aware or will speak.

Because, what are the facts incontestibly proved, and what legitimate presumptions may be drawn from them?

The prisoner comes home in a bad temper and has a quarrel with his wife, whom he beats, though not perhaps with any malice aforethought, nor with any previous intention of doing her any deadly injury. Still, the woman lies in a weak and helpless state till the evening, while her husband (see evidence of No. 14,) walks up and down and pays her no attention. In the morning she is reported to be dead, though it is pretty clear that the beating alone did not kill her, and a story of suicide is circulated, of which there is neither probability nor proof. These facts being proved, it seems to me a very natural and probable conclusion from them that, during the night, the prisoner must have inflicted some further injuries on his wife, either by squeezing or pressing her throat, from which she died, or that he must have so squeezed her at the time of the beating that very little more violence, at any time, was quite sufficient to kill her. And, considering the medical evidence, I would adopt this the more readily, because of the difficulty of proving the fact of squeezing the throat, by more positive evidence, and of the obvious facility for the prisoner of showing that death was owing to suicide, if suicide there had been. On this I would refer to the doctrine of violent and probable presumptions clearly laid down in Archbold's pleading and evidence, page 202.

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The Jury unanimously found the prisoner guilty of the crime charged, and I agree with them.

On the whole, taking the facts proved as beyond question, and the presumption arising from them that death was subsequently caused by the prisoner, to be violent presumption, I would convict the prisoner of the crime of wilful murder, but considering the time during which the man has been kept in suspense, and the circumstances of the new trial, I do not recommend a capital sentence. I would sentence the prisoner to transportation for life beyond seas with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) The fact of this case, as given in evidence, have been so fully given by the Sessions Judge, that it is unnecessary to restate them.

The evidence of the Civil Surgeon shows, that the beating which deceased had received from her husband on the day preceding her death, though severe, was not of itself sufficient to cause death. The face was much swollen, the veins being apparent, and the eyes congested. The tongue did not protrude as it generally does in hanging. Dr. Elliot then goes on to say: "I infer the death to have been caused by strangulation after the beating, there were no marks of the rope on the neck such as there must have been had the death been caused by hanging. Force must have been used both in the beating and strangling. To the best of my belief, I can swear that the deceased did not die from hanging."

The question then for our determination is by whose instrumentality the deceased met with her death.

From the evidence it is clear that on the day previous to the night on which deceased came by her death, there had been a quarrel between her and her husband; that the latter beat her severely; that from the effect of the beating she remained in a very weak state; that during the night she died; and that the prisoner requested the chowkeedar to save him and to say that the deceased had committed suicide.

The prisoner in his defence states that from anger in consequence of his having beaten her, she committed suicide by hanging herself with a rope, and that he had no hand in the killing of her.

The evidence in the present case is purely circumstantial; and consequently the whole conduct of the party charged with the crime must be taken into consideration in estimating the weight to be given to the sum of the facts in evidence before the Court.

Now it is clearly proved by the doctor's evidence that the deceased did not die from hanging. This false statement then, on the part of the prisoner, is a formidable inculpatory fact as

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showing that the prisoner, had been guilty of something requiring concealment. Again the evidence shows that he had been the previous day very angry with, and had severely beaten his wife in his anger, which had not subsided at evening time; and also (which is not denied by the prisoner) that he was the last person in company with her alive, and that her death could not have been the result of suicide. It follows therefore by an irresistible inference that her death which was one of violence must have been caused by him.

Under this view of the case we convict the prisoner of the wilful murder of Gouri Bebee his wife; and under all of circumstances of the case, we sentence him to imprisonment for life in transportation beyond seas.

REGULAR CASES.

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REGULAR CASES.

FEBRUARY, 1859.

PRESENT:

J. H. PATTON, ESQ. *Judge*, AND D. I. MONEY, ESQ. *Officiating Judge*.

GOVERNMENT

versus

KOOKRAH SHEIKH.

Moorsheda-bad.

1859.

February 10.

Case of KOOKRAH SHEIKH.

Prisoner confessed to commission of a crime of dacoity along with certain others who were at the time in jail. Acquitted.

CRIME CHARGED.—1st count, dacoity on the night of the 1st December, 1850, corresponding with 17th Aghran, 1257, in the house of Nityechand Nundee of Ryetah, thannah Dhurmpore, zillah Pubnah; 2nd count, dacoity on the night of the 22nd November, 1851, corresponding with 7th Aghran, 1258, in the house of Ram Soondur Doss of Gungarampore, thannah Dhurmpore, zillah Pubna; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Hemchunder Kur, Deputy Magistrate for the suppression of dacoity.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 7th January, 1859.

Remarks by the Officiating Sessions Judge.—On the 3rd August the Deputy Magistrate sent for the prisoner* as he had been named by Panchoo Khan approver.

On the 29th idem, he reached† the Deputy Magistrate, was identified by Panchoo Gomanee and Madhub approvers and denied his guilt.

On the 30th idem, on the Deputy Magistrate visiting‡ the guards, the prisoner said he wished to confess, and he that day confessed to five dacoities, and subsequently gave the details of 15 more.

* Page 1 of the Deputy Magistrate's proceedings.

† Page 2 of the Deputy Magistrate's proceedings.

‡ Page 9 of the Deputy Magistrate's proceedings.

Witness, No. 1, Panchoo Khan approver deposes, that the dacoity mentioned in the 1st count occurred, and that the prisoner committed it, and his account agrees generally with the prisoner's confession.

The prisoner in No. 2 of his confessions on the 31st idem, stated that about seven years ago, he committed a dacoity in the house of Nitye Mundul of Ryetah in zillah Pubna in the witness Panchoo's gang; that Oomed Sheikh took him to the

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dacoity, and on the road, they met Panchoo and his followers; that the dacoits attacked the house and robbed it of every thing, and that Panchoo Bawool, Jamayat and Meenoo were apprehended by the police with many others.

The record No. 166, corroborates this statement in the Darogah's report* of the 2nd December, 1850, in the prosecutor's deposition,† and in the Magistrate's *roobokary* of the 31st March‡ 1851, in which it appears that Panchoo, Bawool, Jamayat, Meenoo and many others had been apprehended by the police.

* Page 1.

† Page 5.

‡ Page 287.

The witness, No. 3, Ramkomul Doss proves the occurrence of the dacoity in the 2nd count in Gungarampore which is a *mohulla* of Nyamutpore.

The prisoner in No. 7, of his confessions on the 1st September, says that 5 or 6 years ago he committed a dacoity in Gungarampore in Ramsoonder's house, that they robbed the owner, and two people, Perbaz and Ramzan, who did not commit the dacoity, were seized by the police.

The record, No. 148, corroborates this statement in the Darogah's report§ of the 23rd November, 1851, in the prosecutor's deposition,‖ and in the Magistrate's *roobokary*¶ of the 11th December, 1851, by which Perbaz and Ramzan were released.

§ Page 1.

‖ Page 3.

¶ Page 57, of the Deputy Magistrate's proceedings.

The *mohafiz's* report of the 2d September, states that this record of the Ryetah dacoity was with the Deputy Magistrate at the time of this prisoner's confession and the Pubna Joint Magistrate's *roobokary** of the 4th October last, shews that the record of the Gungarampore dacoity was at Pubna when the prisoner confessed: the Deputy Magistrate certifies, that the prisoner could not obtain access to these records or to the approvers.

* Page 59, of the Deputy Magistrate's proceedings.

The witness No. 1, Panchoo, named the prisoner in his confession No. 2, Ryetah, of the 8th March last, but in no other dacoity.

The witness No. 2, Goomanee approver, deposes that the prisoner committed the dacoity in Ryetah with him, and his account agrees generally with that of the prisoner and of the witness Panchoo, and he also in his confession to this dacoity, on the 25th August, No. 35, named Panchoo and the prisoner; he also named the prisoner in his confessions No. 3, Bureipore and No. 18, Girampore.

The prisoner pleads guilty before me and acknowledges his

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No. 5, Loll Behary Ghose. confessions, and as his confessions are proved to have been voluntary by witness No. 5,* and are corroborated as above, I convict him on his own confessions, of the charges noted above and recommend that he be sentenced to transportation beyond the sea for life.

To shew that the statements of approvers cannot be trusted too implicitly, however, I may state that the prisoner in his No. 14, confession says that Panchoo, Oomed and Kadir committed a dacoity with him in Simoolia, but that dacoity occurred on the 14th June, 1851, and at that time all those three persons were in jail under sentence for the dacoity mentioned in the 1st count.

This case was tried under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and D. I. Money.) The history of this case is similar to all the other cases tried by Baboo Hemchunder Kur.

The implication, the arrest, the arrival, the denial, the confinement, the desire to confess, and then the partial and supplementary confessions.

It would appear that the dacoities charged really occurred, and the approver witnesses connect the prisoner with the dacoity charged in the 1st count.

We should convict him upon his plea of guilty before the Sessions Judge of the charges brought against him, but that there is no approver witness to the dacoity charged in the 2nd count, and Panchoo Khan, approver witness No. 1, although put down in the calendar as a witness to the 3rd or general count, duly implicates the prisoner in the dacoity charged in the 1st count and no other, and the prisoner in his confession states, as remarked by the Sessions Judge, that Panchoo, Oomed and Kadir committed a dacoity with him in Simoolia, which occurred on the 14th June, 1851, at the time when these three persons were in jail under sentence for the dacoity charged in the 1st count.

This is a fatal venture and throws so much doubt upon the rest of his confession, that we cannot under the circumstances, accept it as a true and genuine confession, and, therefore, acquit the prisoner and direct his immediate release. A copy of these remarks will be sent with those we have made in the case of Rajib Chunder Jogee to the Judges sitting on the trial of Bahir Sheikh. The Sessions Judge will call for an explanation whether any other prisoners or approvers have made similar statements regarding Panchoo, Oomed and Kadir, viz. that they committed this dacoity in Simoolia.

PRESENT:

J. H. PATTON, Esq. *Judge* and D. I. MONEY, Esq. *Officiating Judge.*

GOVERNMENT
versus
RAJEEB CHUNDER JOOGEE.

Moorshedabad.

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Case of RAJEEB CHUNDER JOOGEE.

Prisoner pleaded guilty to a dacoity occurring, according to his confession, at a place and a time, when it was proved he was in custody elsewhere, for a previous crime. Acquitted.

CRIME CHARGED.—1st count, dacoity on the night of the 17th July, 1852, corresponding with 3rd Srabun, 1259, in the *golabari* of Teelukchunder Boshoo of Koroae Gachee, thannah Meherpore, zillah Nuddea; 2nd count, dacoity on the night of the 13th April, 1855, corresponding with 2nd Bysack, 1262, in the house of Sreedhur Tantee of Jadubpore thannah Meherpore, zillah Nuddea; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Hemchunder Kur, Deputy Magistrate for the suppression of dacoity.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 7th January, 1859.

Remarks by the Officiating Sessions Judge.—The prisoner having been named by Gooee approver was sent for by the Deputy Magistrate on the 19th* August, under the name of Rajchundro Joogee.

On the 8th† September he was sent in by the darogah, who stated that the prisoner said his name was Rajeeb Joogee; the prisoner denied his guilt.

On the 15th‡ Idem, the jemadar reported that the prisoner wished to confess, and he that day confessed to having committed four dacoities, and afterwards gave the details of seven more.

* Prisoner No. 1, Deputy Magistrate's proceedings.

† Page 2.

‡ Page 10.

Witness No. 1, Gooce approver, deposed before me to the prisoner having committed the dacoity named in the 1st count, and his account agrees generally with the prisoner's confession and his own previous confession of the 20th May last, No. 10.

The prisoner confessed in No. 3, of his confession on the 17th September, that 4 years ago he committed a dacoity in the Golabati of Kuraw Bosoo of Koroee Gachee, that the dacoits took a large quantity of property and that a person, not a dacoit, had been seized by the police.

The record No. 235 corroborates this statement by the darogah's report§ of the 18th July 1852, which states that a dacoity occurred on the previous night in the Golabati of Teeluk Bosoo, by his report|| of the 19th July that Kuran Bosoo was Teeluk's nephew, by Kuran's

§ Page 2.

|| Page 7.

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deposition* and by the Magistrate's *roobokaree* of the 19th September† 1852, releasing one Gonnee Sheikh who is named by neither the prisoner nor the approver. The prisoner names Gooee as one of the dacoits.

* Page 8.

† Page 39.

Witness No. 3, Shreedhur Tantee proves the occurrence of the dacoity in the 2nd count, and witness No. 2, Bahur approver deposes, that the prisoner committed that dacoity.

The prisoner in his confession No. 11, of the 22nd September last, stated that he committed a dacoity in the house of a Tantee at Jadubpore four or five years ago and that the dacoits carried off a quantity of clothes.

This account is corroborated by the darogah's report in record No. 10, of the 14th April, 1855‡ and by the Maltalika furd.§

‡ Page 1.

§ Page 6.

The approver Bahur's confession No. 1, of the 17th July last agrees with the prisoner's confession generally, but the prisoner has not named this approver in it.

The Deputy Magistrate certifies that the records of both these cases were in his office and that the prisoner could not get access to them or to the approvers.

The approver Gooee named this prisoner in his confessions No. 2, Gooabari, No. 10, Koroee Gachee and No. 12, Kolabari Gopalpore in April and May last, and the approver Bahur named the prisoner in his confessions No. 1, Jadubpore, No. 2, Dowlatabad, and No. 23, Sharbari in July last.

The prisoner pleads guilty before me and acknowledges his confessions, and his confessions are proved by witness No. 5, Lall Behari, to have been voluntary, I therefore convict him of the three charges of the calendar and recommend that he be sentenced to transportation beyond the sea for life.

To shew that the statements of approvers generally are not to be trusted too implicitly, I may state that this prisoner confessed in No. 2, on the 16th September, that he committed a dacoity in Thengra, but that dacoity occurred on the 11th November, 1855, and at that time he was in charge of the police as he was seized in the Buxipore dacoity on the 9th June, 1855, sent for at Mashtudaruk on the 23rd August, 1855, and sentenced to six months as a *budmash* on the 29th December of that year.

This case was tried under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and D. I. Money.) This prisoner passes the usual ordeal before the Deputy Magistrate, Baboo Hemchunder Kur.

He is implicated by approver; is summoned, reaches the Deputy Magistracy; denies his guilt; and is shut up.

But, seven days after, fortunately perhaps for the ends of

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justice, the jemadar of the guard reports the prisoner's anxiety to disburden his conscience; whereupon he is brought up and following the prevalent fashion, confesses to the commission of four dacoities and subsequently enters into a detail of seven more.

The approver witness No. 1, incriminates the prisoner in the dacoity charged in the 1st count, and it would appear from the record that it was committed, but there is no other evidence to show the prisoner joined in the commission.

The dacoity charged in the 2nd count, would appear also from the record to have been committed, and it is sworn to by the approver witness No. 2, Bahir Sheikh, who implicates the prisoner in the dacoity.

But it is strange that the prisoner who confesses to this amongst other dacoities, should not in his confession, name Bahir Sheikh as one of the dacoits.

There is the ordinary certificate of the Deputy Magistrate that the records of both these dacoities were in his office, and that the prisoner could not get access to them or to the approvers.

From what has come before us in many of these dacoity cases, and from our experience of subordinate native officers, we must say, that despite the precautions of the Deputy Magistrate, it is difficult to persuade ourselves to believe that there is no possibility of communication between either the forbidden parties, or between them and those who are interested in the result.

It would seem from the record of another case in this Court, that Bahir Sheikh has been made an approver in this case before he has been convicted by the Court, of having belonged to a gang of dacoits.

The prisoner pleads guilty before the Sessions Judge, and this plea would, in ordinary cases, with the occurrence of the dacoities charged established, and the prisoner's connection with them, if not proved, still legally presumed, be sufficient for his conviction.

But in addition to the circumstances above stated, which throw doubt upon the proceedings, there is the fact, stated by the Sessions Judge, that the prisoner confessed that he committed a dacoity in Thengra, which occurred on the 11th November, 1855, while it is in evidence, that he was at that time in charge of the police, having been arrested in the Buxipore dacoity on the 9th June, 1855, sent up for enquiry into his mode of life on the 23rd August, 1855, and sentenced, six months as a *budmash* on the 29th December of that year.

It is impossible for the Court under these circumstances, to convict the prisoner of the crimes charged, and to sentence him, as recommended by the Sessions Judge, to transportation

for life. The recommendation is scarcely consistent with the facts disclosed. We therefore acquit the prisoner and direct his immediate release.

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With reference, however, to the case of Bahir Sheikh, we direct that the record of this case be placed before the Judges who may be sitting upon his trial together with a copy of these remarks.

PRESENT:

D. I. MONEY AND H. V. BAYLEY, ESQS.
Officiating Judges.

GOVERNMENT
versus
KADER MUSSULMAN.

Moorshedabad. 1859. February 12. Case of KADER MUSSULMAN.

Prisoner's confession did not tally with the evidence of the approver who implicated him in quite a different dacoity and had not in his own confession mentioned the crime with which prisoner was charged; nor had another, who did confess to the same crime, named prisoner. Acquitted.

CRIME CHARGED.—1st count, dacoity on the night of the 21st August, 1852, corresponding with 7th Bhadro, 1259, in the house of Ramkisto Sirkar of Moheeshbathan, thannah Kureempore, zillah Nuddea; 2nd count, dacoity on the night of the 10th September, 1855, corresponding with 26th Bhadro, 1262, in the house of Aungodebee Khankee of Katholia, thannah Maherpore, zillah Nuddea; 3rd count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Hemchunder Kur, Deputy Magistrate for the suppression of dacoity.

Tried before Mr. A. Pigou, Officiating Sessions Judge of Moorshedabad, on the 8th January, 1859.

Remarks by the Officiating Sessions Judge.—On the 2nd August last the Deputy Magistrate sent* for the prisoner as having been named as a dacoit by Giree approver.

On the 24th Idem† he reached the Deputy Magistrate, was identified and denied his guilt. On the 27th Idem, the Jemadar reported that the prisoner wished to confess, on the same day he confessed generally to four dacoities and subsequently to five more.

* Page 1, of the Deputy Magistrate's proceedings.

† Page 6, ditto ditto.

Witness No. 1, Benee Sircar, proves the dacoity mentioned in the 1st count.

The prisoner in detailed confession No. 1, of the 28th August, stated that he had committed a dacoity five or seven years previously in the house of Ramkisto Sircar of Maheeshbathan, that they looted *Khansa* vessels and other things and that Alum and Ramoo were apprehended by the police and released.

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This account is corroborated by the record No. 131, by the darogah's report* of the 22nd August 1852, which says this dacoity occurred the previous night, by the Multalika† which shows that *Khansa* utensils were stolen, by one Meahjan's confession‡ of the 23rd Idem in which he named this prisoner, and by the Darogah's report§ which shows that this prisoner Alum and Ramoo were apprehended.

* Page 1,

† Page 7 to 9.

‡ Page 22.

§ Page 29.

Witness No. 2, Aungodebee proves the dacoity mentioned in the 2nd count.

The prisoner confessed in No. 6's detailed confession of the 30th August last that three or four years ago he committed a dacoity in the house of Aungodebee of Kathoolia, and that the dacoits robbed her of gold and silver ornaments and about 100 Rs. in cash; he also says that he took the men of his own gang to this dacoity and that Giree Moochee (witness No. 3,) took others unknown to him.

The darogah's report in record|| No. 49 of the 11th September, 1855, proves that this dacoity occurred the previous night, and the Maltalika¶ furd shews that gold and silver ornaments and 100 Rs. cash were stolen.

|| Page 2.

¶ Page 14.

I find by a *roobacarry* of the Nuddea Magistrate of the 4th September last, in the Deputy Magistrate's proceedings (not paged) that the record of the Maheeshbathan dacoity was sent to him on the 30th August last, and on the back of that *roobacarry* the Mohafiz on the 9th September last, reports that it was sent for on Moochee Subjee's confession and by enquiry, I learn that it reached the Deputy Magistrate on the 7th September. Moochee's confession is with the Sudder Court and no *nuksha* of his confessions is extant in the Deputy Magistrate's office, so that I am unable to see if the prisoner was named by Moochee,* but it is clear that the prisoner confessed previous to that case reaching the Deputy Magistrate.

I also, learn by enquiry, that on the confession of one Ramlall Sorawalla, the Kathoolia dacoity was sent for on the 18th August last and reached the Deputy Magistrate by the Nuddea Magistrate's *roobacarry* of the 30th Idem subsequent to the prisoner's confession.

I examined Ramlall Sorawalla's confession No. 7, of the 17th August, and find by it that the prisoner's statement of people of different gangs having committed it, is corroborated, as Ramloll only is able to name to people and none of them are those

* I subsequently obtained an unauthenticated copy of Moochee's confession, and find that in No. 7 of the 14th August he confessed to this dacoity and did not name the prisoner, but did name one *Jitookhan* who is also named by the prisoner.

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named by the prisoner, and Ramloll says Gooee got it up and brought some of his people; on turning to Gooee's *nuksha*, I find that Gooee did not confess to this Kathoolia dacoity at all.

Witness No. 3, Giree Moochee, deposes that the prisoner belonged to a gang of dacoits and that he committed dacoities with him in Shampore and the above Kathoolia; I find this witness did not confess to the Kathoolia dacoity, and so I place little credit on his present assertion regarding that dacoity; the witness however confessed on the 12th February last long before the prisoner's apprehension, to the Shampore dacoity and named this prisoner as concerned in it; I cannot find from perusal of his confessions that he named him in any other dacoity.

The prisoner pleads *not guilty* before me and says that Moteeram had a quarrel with him and colluded with Giree Moochee to name him as a dacoit and says, that his general and detailed confessions were all made at Mothee's and Giree's teaching, but he does not explain the inconsistency of his alleged enemy teaching him stories of dacoities to convict himself, and he acknowledges that he did make the defence of the 24th August last before the Deputy Magistrate; in that defence he did not name Mothee at all and said that he had a quarrel with Giree, and now he says he does not know Giree! I have turned to Mothee's confessions and find that he did not name the prisoner in any of his confessions and he did not confess to any of the dacoities mentioned by the prisoner! and Giree only named him in the Shampore dacoity which is also the only dacoity amongst those mentioned by the prisoner which Giree confessed to. The prisoner's confession No. 3, of the 28th August, regarding the Shampore dacoity agrees with the witness Giree's confession to it and he names Giree and some others named by Giree.

The prisoner's confessions are proved by witnesses Nos. 4 and 5 Lallbehary and Koonjo, to have been voluntarily made and as the facts of the two dacoities in the calendar as stated in those confessions are borne out by the corroborating circumstances above mentioned, and as the Deputy Magistrate certifies that the approver Giree could not have obtained access to him, and since, as above shewn, the prisoner could not have learnt any of the particulars of these two dacoities from the record which did not arrive till after his confessions were finished and therefore he could only have known the particulars of those dacoities by having been personally concerned in them, and as he did not deny his guilt when made over to this court for trial, I convict him of the 1st and 2nd counts of the calendar.

The witness No. 3, and the prisoner's confessions to nine dacoities prove that he did belong to a gang of dacoits, I therefore convict him also of the 3rd count of the calendar

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and recommend that he be transported beyond the sea for life.

The prisoner while before me names witnesses to character, but as he did not name them previously, I am unable to send for them. This case was tried under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. D. I. Money and H. V. Bayley.) The implication and arrest of the prisoner, and his subsequent partial and supplementary confessions are of the same character in this case, as in other recent cases commented on by the Court.

The dacoities, it would appear from the record, took place. It is necessary to establish the prisoner's connection with them or, on the 3rd and general count, the prisoner's association with a gang of dacoits.

There are no approver-witnesses to depose to the dacoities charged in the first and second counts. There is pending in the Nizamut Adawlut the case of Moochee Subzee who confessed to the dacoity charged in the first count, but never named the prisoner. The prisoner, in his confession, states that he approver, Giree Moochee, who appears in the calendar as a witness to establish the 3rd or general count, was present with some of his gang in the commission of the dacoity charged in the 2nd count.

But although prisoner's statement is confirmed by the approver, Giree Moochee, yet Giree Moochee never apparently confessed to this dacoity at all, and although he, the approver, is named as a witness on the 3rd or general count, yet he implicated the prisoner in the Shampore dacoity and in that only.

The Sessions Judge discredits the approver's evidence regarding the commission by the prisoner of the dacoity charged in the 2nd count, upon sufficient grounds and we presume, this was the reason why he was not included in the calendar as a witness to that charge.

The evidence against the prisoner is totally insufficient and does not justify the recommendation of the Sessions Judge that he should be transported for life.

Under these circumstances, we acquit him, and direct his immediate release.

REGULAR CASES.

MARCH,

1859.

REGULAR CASES.

MARCH 1859.

PRESENT:

A. SCONCE, ESQ., *Judge.*

GOVERNMENT AND BEJOYSHUNKER DOSS

versus

DWARKANATH DEY.

East Burdwan.

1859.

March 7.

Case of DWARKANATH DEY.

In this case where the charge is founded simply on the finding of a lost note and the subsequent retention and disposal thereof, without the knowledge of the original owner, no criminal offence is held to have been committed, and the prisoner is acquitted.

CRIME CHARGED.—Feloniously taking and retaining in his possession a Bank of Bengal note, Number 11,029, for (1000) one thousand Company's Rupees, the property of the prosecutor and disposing of it to Pearimohun Dutt, well knowing that the above note had been acquired by unlawful means.

CRIME ESTABLISHED.—Same as crime charged.

Committing Officer.—Mr. H. B. Lawford, Magistrate of East Burdwan.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of East Burdwan, on 20th December, 1858.

Remarks by the Officiating Sessions Judge.—The prisoner pleads *not guilty*.

It appears* that on the 3rd January, 1857, the prosecutor Bejoy Shunkur Doss, while proceeding in a *keranchee* from Cossipore to Calcutta, lost the Bank Note, which he had had in his pocket when he left home. He immediately gave intimation to the Bank of Bengal, and also advertized the loss in the Exchange Gazette. No one had been with him inside the *keranchee;* but two persons, including the driver, were *outside.* The note was presented for payment to the Bank on the 16th February following, by one Pearimohun (witness No. 7,)* who was examined before the Magistrate, but who is not in attendance at the Sessions Court, and, on his being questioned regarding it, he stated that he had purchased it from the prisoner on the preceding day, paying him in exchange for it gold and silver. The prisoner, who is a poddar living at Kunchunnuggur in the outskirts of the town of Burdwan, on being brought before the police and the Magistrate, stated that he had purchased the note from one Radhagobind Doss, on or about the 12th February, 1857. That he knew Radhagobind before, having had previous dealings with him, that when Radhagobind brought him the 1,000 Rupees note, he, not having sufficient money in hand to cash it with, took it

* Wit. No. 2, Nobinchunder Doss,
" " 3, Banessur Holdar,
" " 4, Isserchunder Chuckerbutty,
" " 5, Sydur Ruhman.

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to Pearimohun in Calcutta, leaving Radhagobind at his shop until his return, and that, on his coming back, he paid Radhagobind the price of the note.

In this Court he makes a defence to the like effect, and calls six witnesses* to prove his having purchased the note from Radhagobind Doss.

* Wit. No. 8, Hurinarain Dey,
9, Beharelal Dey,
10, Harodhun Dutt,
11, Radhamohun Addy,
12, Kisto Dutt.
13, Gopinath Poddar.

The Jury (Baboos Gunganarain Mitter, Kistochunder Nundee, and Umbicachurn Sircar) convict the prisoner of the crime charged in the indictment, and I concur in their verdict. Though every search was made for Radhagobind Doss, the person from whom the prisoner states he purchased the note, yet no trace of him could be found at the locality pointed out by the prisoner as his place of residence; and, such being the case, I can attach no weight to the evidence for the defence which purports to show that the note was come by in a fair and honest manner; especially as the evidence in question is that of relatives and dependants, and as the account-books put in by the prisoner in support of his defence do not, in my opinion, bear a genuine appearance, and as the statement given by the prisoner of the transaction appears a very improbable one.

I convict the prisoner of the crime charged in the calendar, and sentence him to three years' imprisonment with labor, and to pay a fine of Rupees 1000, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Sconce.) What alone is proved in this case is that the prisoner Dwarkanath Dey had in his possession and passed off, for value, a Bengal Bank Note, No. 11,029, for the sum of Rupees 1000, which note had been lost or dropped by the owner Bejoy Shunkur Doss, but the charge laid against the prisoner goes much further: it asserts that the note had been acquired by unlawful means, and that prisoner so knowing, feloniously took and negociated the note.

Now, we have no evidence whatever to show that the note had been acquired by any unlawful means. The prosecutor said plainly at the trial, and never said otherwise, than that he lost the note. He brought no charge of theft, and by his statement the loss of the note was to him an accident. The worst that can be said against the prisoner is that he found the note and afterwards negociated it. He indeed adduced evidence to prove that he negociated the note on behalf of one Radhagobind Doss, and it may be that he did act as agent for this person. but apart from the question of innocent agency, even on the supposition that the prisoner found, kept, and negociated the note, we are not competent, I think, to declare the finding

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to be an unlawful means of acquisition, and the keeping of the note a felony. Our law does not declare the picking up of a dropped note to be, as the Magistrate describes it, unlawful, and the subsequent keeping of it a felony, and these two acts, standing simply as the ground of charge against the prisoner, do not constitute a criminal offence. It is proved that the prosecutor advertized the loss of his note in the Exchange Gazette, but a knowledge of this advertizement is not brought home to the prisoner. We are not competent to say that the prisoner knew Bejoy Shunkur Doss to be the rightful owner of the note and with that knowledge negociated it for his own benefit, or the benefit of his employer Radhagobind. How far the knowledge possessed by the finder of a note, of the identity of the owner and loser would sustain a charge of felony against him, I need not now consider. Here, we have simply a finding without knowledge of the loser, and it seems to me, as already said, that the note cannot be held to have been unlawfully acquired or feloniously retained and disposed of by the prisoner.

I observe it has been ruled in England, on an indictment for stealing a Bank-note which the defendant had picked up, not knowing the owner, so that there was no larceny in the original taking, the offence was held not to be committed, though, after being informed who the owner was, he changed it and appropriated the money to his own use. In that case, then, even the knowledge of the real owner of the note, on the part of the finder, before he turned the note to his own benefit, was not held sufficient to warrant a conviction. But that additional ground of criminality, whether possible or not, does not arise in this case; and, for the reasons above given, I think the conviction of the Sessions Judge must be annulled.

PRESENT:

E. A. SAMUELLS, Esq., *Officiating Judge.*

GOVERNMENT AND GOLUKNATH ROY *versus* GORACHAND BAGDI CHOWKEEDAR.

Hooghly.

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Case of GORACHAND BAGDI CHOWKEEDAR.

The prisoner's confession of a dacoity before the Magistrate, was considered suspicious, inasmuch as, while implicating a number of persons, none of whom are convicted, it represents prisoner as joining a gang of dacoits reluctantly, and taking no active part in it; while none of the stolen property is traced through means of the confession, and prisoner, a Chowkeedar was under the Darogah's influence, whose conduct in the case had been deservedly reprobated, so that prisoner's averment that the confession

CRIME CHARGED.—1st count, dacoity in the house of prosecutor Golucknath Roy, whereby the prosecutor was slightly wounded, and property valued at Rs. 1,097-6 was plundered; 2nd count, committing the above dacoity whilst holding the post of police chowkeedar.

CRIME ESTABLISHED.—Accessary both before and after the fact to dacoity.

Committing Officer.—Moulvee Abdool Luteef, Deputy Magistrate of Jehanabad.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge of Hooghly, on the 6th September, 1858.

Remarks by the Officiating Additional Sessions Judge.—The case was tried under Act XXIV. of 1843.

The prisoner No. 1, pleads *not guilty.*

The prosecutor charges him with having committed a dacoity in his house on the night of the 19th April.

The evidence consists only of the prisoner's confession made before the darogah and before the Deputy Magistrate. The facts which led to his arrest are as follow: One Gobind Bagdee who is not produced as a witness in this court, appears to have informed the darogah on the 21st April that he had overheard Rajoo Haree and Sreemunt Haree talking over the non-distribution of some stolen property. The darogah arrested them and searched their houses. Nothing was found, but Rajoo Haree is said to have confessed before the police. He, however, retracted his confession before the Deputy Magistrate, and was not committed for trial. In his police confession he had named the present prisoner, Gorachand Bagdee, who was accordingly arrested.

Witnesses Nos. 12, 13 and 14, give evidence to the prisoner's confession before the darogah, the two former consistently, the latter became confused and apparently answered at random; Nos. 12 and 14, are of the Sudgope caste, No. 13, is an old Nugdee in the Zemindar's cutcherry, the latter can just sign his name, and that is all; none of the witnesses could give any particulars of the prisoner's confession, stating as the reason the great length of time since they had heard it, viz. four months. They can only recollect that he confessed to the dacoity. I am of opinion that the darogah should appoint more intelligent

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was an extorted one was very probable; while his character has been favorably deposed to, and his presence on his patrol duty on the night in question attested. Prisoner, therefore, was acquitted, notwithstanding his confession.

persons, and of a better class than he has in this instance, to attest prisoners' confessions.

Witnesses Nos. 15, 16 and 17, are moktears of the Deputy Magistrate's Court at Jehanabad, they give evidence to the fact of the prisoner's confession before the Deputy Magistrate. But they also state that they do not recollect the particulars of it further than that he confessed to a dacoity. They cannot say what part he said he took in it,

The evidence of all the witnesses goes to show that both confessions were given freely and voluntarily, the latter before the Deputy Magistrate was a very long one, and several questions were put to him which he answered consistently.

Both confessions are to the effect that he heard, several days previous to the dacoity, that it was intended that one Sittanath Roy, a cousin of the prosecutor, living within the same compound, had concocted it, and the prisoner had been asked by him and by others to join. He had objected; but on the night of the dacoity, when he was summoned, he went to the place of assemblage, he then marked who were present, saw all the preparations made, and only left the gang when they actually went to commit the crime. He kept all this in his own breast and gave no information to the police, even after the occurrence, until Rajoo Haree named him and he was arrested.

The prosecutor and witnesses Nos. 1 to 7, prove the occurrence of the dacoity. They state they recognised several persons committed with the prisoner, who have been acquitted on grounds separately recorded. But there is no doubt that the dacoity did take place.

Witnesses Nos. 18, 19 and 20 are brought forward to prove the bad character borne by the prisoner. They at first stated that he was always considered a respectable man until arrested in this crime, but on cross-examination they admit, except No. 19, that his expenses are beyond his means, and that he is a frequenter of the grog-shops.

The prisoner in his defence urges, that he has been seventeen years a chowkeedar; that the statement he made to the darogah was given in consequence of the prosecutor asking him to give evidence against the remaining prisoners in this case; that on the night of the dacoity he was at his post in his own village; and that after the dacoity he came up with the villagers.

His witnesses prove that he was at his post up to 11 o'clock, but can say nothing of his movements after that hour, his coming with the villagers after the dacoity is not opposed to his confession.

I am bound to believe, until it is proved to the contrary, that an officer in the position of Abdool Luteef, exercising the full powers of a Magistrate, not only had the confession of this prisoner taken down in his presence, but heard from his mouth

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the whole of his statement and saw it correctly recorded. The prisoner is not a young man, but an old policeman, and must have thoroughly understood the effect of his confession. He may have hoped that he would ultimately be allowed to become a witness in the case, but there is nothing to shew that any such inducement was held out to him. The prisoner's guilt, as an accessary to this dacoity, is completely proved by his confessions, I therefore convict him of that crime and sentence him to five years' imprisonment with labor and irons.

I would, however, here record my opinion, that, admitting the clue gained by the darogah to have been a correct one, he has miserably failed in bringing the crime home, to the real perpetrators. Four brahmins of the Sonar Banya caste, Chuckerbutties of Gobindpoor, are pointed out as having been the receivers of the stolen property. Instead of proceeding himself to search their houses, as being the most likely place in which to find the property, he deputes the thannah jemadar for the purpose and although all four are found to be absent from their homes, not one attempt is apparently made to discover where they have gone to, when they absconded, or in any manner to arrest them, their houses are searched, and no more mention is made of them, except that they are absent. And these men are said to have been in other dacoities frequently charged as receivers.

The darogah should also in this case have made some enquiries at the *soorees*' shops. At the spot where the dacoits assembled a large *kulsee* of grog was found, which cannot have come from any distance. In the statements of the two prisoners who confessed, mention is several times made of the *soorees*' shops as the place where the dacoits met and talked over the intended dacoity, and still the darogah has the coolness to record in his *sooroothal*, held a week after the dacoity, in the customary words that " there is no grog-shop or fuqeer's temple in the neighbourhood," and he never sends for or questions the keepers of the shop alluded to in the confession.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The prisoner is convicted on confessions recorded before the darogah and Deputy Magistrate, of being accessary before and after to a dacoity. If his confessions are valid, he ought to have been convicted of dacoity, the crime for which he was committed, as he distinctly states that he was present at the dacoity, though he alleges that he did not enter the house of the party who was plundered; I cannot, however, convict upon the prisoner's confession, uncorroborated as it is by the production of the stolen property, by any evidence or even by the probabilities of the case.

The prisoner states that he was induced to make this confession by the darogah. This appears to me very probable, for

the confession is one of those in which the prisoner, while implicating numerous persons (none of whom have been convicted) maintains that he himself accompanied the gang with reluctance and took no active part in the robbery.

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The prisoner is a chowkeedar under the influence of the darogah and may very easily, have been persuaded by him to make this confession under a promise of being admitted as a witness. Unfortunately conduct of this kind on the part of the police is no rarity, and in this particular case, the general proceedings of the darogah who was employed in the investigation of the dacoity, have been deservedly noticed in terms of reprobation by the Sessions Judge. The prisoner has not before been accused of any crime and no proof is adduced that he even bore a bad character. His witnesses declare that he was at his post on the night of the dacoity, and the Deputy Magistrate has not attempted to prove his absence. In such a state of facts, a conviction is impossible. The prisoner is acquitted and released.

PRESENT:

E. A. SAMUELLS, ESQ., *Officiating Judge.*

SREEMUTTY MOTTEE BEBEE AND GOVERNMENT

versus

TRAHEERAM MUNDUL (No. 1.) RAMLOCHUN MUNDUL (No. 2,) AND RAM SHUNKER* (No. 3.)

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The attack upon the burglar was more violent and prolonged than necessary and resulted in the burglar's death, but it was made in the dark in ignorance of the extent of a present danger, and of the

CRIME CHARGED.—Wilful murder of Mahomed Kamil *alias* Lokbia husband of Sreemutty Mottee Bebee, prosecutrix.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Chittagong.

Tried before Mr. E. F. Radcliffe, Additional Sessions Judge of Chittagong, on the 30th December, 1858.

Remarks by the Additional Sessions Judge.—The prosecutrix states that on the last Sunday night in the month of Aghrun, Rammohun and Ram Ruttun, and before the Magistrate, Rammohun and Soondur, invited her husband to cure the child of Rammohun who had been attacked with cholera; that he accompanied them and next morning she heard he had been murdered by prisoners Nos. 1, 2 and 3; in the mofussil, she observed that two men came about 9 P. M. of that evening for some purpose unknown and called her husband, that he went along with them and afterwards heard of his death; that no

* Acquitted by the Lower Court.

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measure of force necessary to avert it in a moment of excitement when suddenly aroused from sleep, and when prisoners had no opportunity of reflection, six months' imprisonment was, therefore, considered an adequate punishment.

enmity existed between him and the prisoners, and that as he was a notorious thief, being punished twice for similar offences, she was not inclined to prosecute.

The Magistrate submitted a petition on the part of Government, but did not appear in person or through Government pleader.

Witnesses Nos. 1 and 2, saw the body of the deceased at the house of the prisoners and observed the mark of a blow from a stick under the right eye. Witness No. 4, Doctor W. B. Beatson, the Civil Assistant Surgeon, deposes, that "death was "evidently caused by severe beating, that the external marks "of violence were bruises on the right cheek and right "shoulder, marks of a narrow ligature round the left arm imme-"diately below the arm pit with blood effused into the cellular "tissues beneath, a cut or scratch through the skin of the "middle finger of the left hand. Beneath the scalp there was a "quantity of serous effusion with spots of bruising, the brain "was congested and a layer of blood poured out over its surface. "Beneath the integument of the chest extensive bruises were "found, the ribs of the right side, from the 2nd to the 10th, were "fractured about 3 inches from the cartages, the same ribs on "the left side were similarly fractured and also fractured "posteriorly about 3 inches from the spine," that these severe injuries were caused by being knelt or trampled on, and that the man must have been most cruelly treated.

Witnesses Nos. 17 and 18, the neighbours of the prisoners, state that on the night of the occurrence, they were awoke by hearing the sounds of beating; that on entering they found the house dark, but on a light being brought they saw two holes through which a burglarious entry had been effected, and the deceased lying on the ground; that the prisoners Nos. 1 and 2, had before apprehended him with a *lota* and *thally* belonging to them in his possession and that they afterwards bound his arms, and dragged him out into the compound where he died about 9 A. M. the next day; that when others came they went away. Witnesses Nos. 19, 20 and 21 saw the deceased lying insensible and before the Magistrate witnesses Nos. 18, 20 and 21, deposed that they heard the prisoners state that they had maltreated the deceased.

The prisoners in this Court pleaded *not guilty*, and in his defence prisoner No. 1, stated that a thief having obtained a burglarious entry into his house he and prisoner No. 2, arrested him, that afterwards his son, prisoner No. 3, together with three others, came and saw him arrested, that he and the above mentioned, on the thief's attempting to escape, assaulted him, more especially the three, Ramsoonder, Rammohun and Ruttun, with their elbows; that he forbade the assault but they would not listen to his words; that with the assistance of the strangers

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he bound the thief's arms and brought him into the compound, where he sat up.

In the mofussil he deposed, that he and the prisoners Nos. 1 and 2, were asleep when about one *puhur* of the night remaining, his house was burglariously entered; that he arrested the thief and tied him whilst in the act of stealing his *lota* and *thally;* that the three prisoners then assisted and bound his arms; that the three strangers came up and that then the six men brought him out and beat him with their elbows; that in the morning he reported the theft to the police but mentioned nothing about the assault on the thief; that it was customary to maltreat thieves; that he did not think he would die; that he has witnesses to prove his innocence as he did assault him by striking four or five blows with his elbow.

Before the Magistrate he states that hearing the jingle of something against his "*lota*" and "*thalee,*" he was aroused and saw a man whose foot he laid hold of, when he and the prisoner No. 2, arrested him; that they and prisoner No. 3, each of them, struck the thief three or four blows; that the three strangers then came and also beat him; that upon his appearing much wounded they brought him outside, where they bound him with a thin rope, and subsequently he died from the maltreatment.

Prisoner No. 2 deposes that in the "*goolmal*" he may have assaulted the thief, that he *assisted in tying* his arms, and being brought into the compound the thief sat up.

In the mofussil this prisoner stated that he and the prisoners Nos. 1 and 3, apprehended the thief, that he was insensible when placed in the compound, but cannot say who struck him with a stick.

Before the Magistrate, that he and the other prisoner struck the deceased with their elbow and a stick, but cannot exactly state which prisoner used that instrument, and which struck him with his elbow.

Prisoner No. 3, declares his father-in-law, prisoner No. 1, apprehended the thief, but as he could not hold him, the three strangers came and tied his arms, states that he did not strike him.

In the Mofussil and before the Magistrate he admits having in the *goolmal* apprehended the thief and pushed him outside, denies the assault, laying the blame on the other prisoner.

By the evidence of witnesses Nos. 5 and 6, the Mofussil confessions are proved to have been voluntary and by the testimony of witnesses Nos. 11, 12 and 13, those taken before the Magistrate, but irregularities have been observed in both

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the subject of a letter to the Magistrate No. 74* dated 29th December, 1858.

* *From the Additional Sessions Judge of Chittagong to the Magistrate of Chittagong, No. 74, dated the 29th December,* 1858.

In the trial of Calendar No. 1 for the month of December, 1858, I have the honor to point out the following irregularities, and with reference to Nos. 1 and 3 to request you will explain the cause, and with respect to No 2 that you will call upon the Police for a report, and if not satisfactory, punish the offender accordingly.

1st. Although warned in my letter No. 22,* dated the 14th last May, that it was highly irregular for the evidence to be taken by any but yourself, without specifying by a proceeding the cause, it appears that the evidence of several of the witnesses has been taken by your assistant, Mr. Tottenham.

* Para. 3.

2nd. That the certificate upon the confessions of prisoners taken by the Police in conformity with Circular Order No. 54 in Vol. II. paragraph 21, has been omitted.

3rd. That the confessions of the prisoners as proved by the evidence of the three attesting witnesses were taken by three different Moharrirs simultaneously, and the witnesses were so placed one by each prisoner that it was impossible for them to hear the words that fell from the mouth of each prisoner.

From the Magistrate of Chittagong to the Additional Sessions Judge of Chittagong, No. 12, dated the 18th January, 1859.

With reference to your letter No. 74 of the 29th ultimo, I have the honor to report as follows:

* *From the Additional Sessions Judge of Chittagong to the Magistrate of Chittagong, No. 22, dated the 14th May,* 1858.

With reference to the trial of the prisoner Mokur Ally on a charge of rape which has this day terminated, I beg to offer the following remarks:

2nd. The thannah of Puttea being within only a few hours' journey from Chittagong, the Darogah would seem to have been highly culpable in omitting to send in the girl Shumsha for surgical examination for four days after a complaint of so heinous nature had been lodged at the Police Station; had the Darogah forwarded the girl immediately, Doctor Beatson's evidence would have been more satisfactory, regarding the violation said to have been perpetrated; it is necessary to call upon the Darogah for an explanation of the delay, and if the result be unsatisfactory, to visit such conduct with severity.

3rd. In the course of this trial also I observe that the evidence in chief has been taken in the presence of your assistant, and merely a few questions appended thereto by yourself, but no proceedings are on the record to show how, or by whom, the assistant Magistrate was authorized to record that evidence; in all cases referred to a lower Court for preparation, a proceeding or order to that effect should be issued, but in heinous offences I am of opinion that the evidence should be recorded in your own presence and attested with your own signature.

4th. An unusual mode of procedure seems to prevail in your Court with reference to the non-summoning the Civil assistant Surgeon to give evidence in serious cases. It is possible that in some cases, his evidence may be dispensed with, but in a case of rape so much depends upon medical jurisprudence, that I think you would have exercised a sound discretion had you taken Doctor Beatson's deposition upon oath upon certain minute points before committal.

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The certificate required by Circular Order No. 54, volume 2, paragraph 21, has been omitted by the Police and the con-

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2nd. No such letter as that referred to in your 1st paragraph is to be found in my Office; should there be any rule or Circular which precludes the Joint Magistrate in the absence of the Magistrate, from hearing the evidence in cases taken in his presence, I should feel obliged by your pointing it out to me, as I am not aware of its existence. In the present case I only desired Mr. Tottanham verbally, or by letter, I forget which, to take the evidence of the most important witnesses, so that they might not be tampered with before the following day. The remaining witnesses were taken before me.

3rd. As regards your second paragraph, I beg to state, that on referring to the papers of the case you will find the irregular proceedings of the Rangoneah Mohurrir and particularly the one mentioned by you, noted in my own handwriting on the back of the chellan and dated the 21st December. You will also further see that the Mohurrir was suspended by me on the 24th December. The roobakaree to that effect being *in* the nuthee.

4th. As regards the 3rd paragraph, all I can say is that the confession was taken in my presence, late in the evening after dark; that the Collector, Mr. Abercrombie, happened to be present at the time, and that there was no irregularity that I am aware of; so late in the evening it was not possible to obtain more than three subscribing witnesses who attested the confession, and they were witnesses to all the three confessions which were certainly written by three different Mohurrirs, but made clearly and willingly, and separately by each prisoner to *me*, so that if I could hear them, the statement of the subscribing witnesses "that it was impossible for them to hear the words that fell from their mouths" must be false. Besides, after reading over the confessions to the prisoners I asked them, as I invariably do, whether that was their own confession freely and voluntarily made, to which they replied in the affirmative

5th. I regret that my absence from the station should have caused me to overlook replying to your letter sooner.

From the Additional Sessions Judge of Chittagong to the Magistrate of Chittagong, No. 5, dated the 19th January, 1859.

I have the honor to acknowledge the receipt of your letter No. 12, of yesterday's date and to forward herewith, copy of the letter referred to in your 2nd paragraph, the original having evidently been mislaid.

2nd. With reference to your 3rd paragraph I beg to state that in the absence of your Peshkar or Government Pleader, it was impossible for me to search every corner of the record for an explanation, and here I would observe the uselessness of submitting an *arzee* as you did without appearing in person or through your pleader. There is, as you state, in your handwriting on the back of the *chellan* dated the 17th December, 1858, the following words: "No attestation of confession. No statement of confession in *chellan*. No witnesses sent," but no notice besides this seems to have been taken of the subject, for the Mohurrir was not called upon to answer for these omissions, but was suspended on the 24th December; because he, in your opinion, forwarded an incorrect statement regarding his conduct in persisting to retain Traheeram as plaintiff, instead of defendant. Nor do I see that the meaning "of no attestation of witnesses" can be interpreted into the Mohurrir's omission to superscribe the confession with the prescribed certificate, the subject complained of by me.

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fessions before the Magistrate have been taken by three Mohurrirs simultaneously, in the presence of the witnesses, but not in the

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3rd. The explanation contained in your 4th paragraph will be annexed to the record of the case under notice. I would however beg to point out the more regular course, that the attesting witnesses should be so placed that they can hear the words that proceed from the mouth of each prisoner, and that the confession should be taken separately in the presence of the witnesses.

From the Magistrate of Chittagong to the Additional Sessions Judge of Chittagong, No. 18, *dated the 22nd January*, 1859.

I have the honor to acknowledge the receipt of your letter No. 5, of the 19th current and in reply to state as follows:

2nd. With reference to your second paragraph, I beg to state that when Magistrate of Sylhet, I never used to employ any one on the part of Government, to plead except in very intricate cases or those in which the defendants were wealthy enough to employ Counsel for themselves. This practice was approved of by the higher Court as one which was a saving to Government. I used, however, to give in a petition on the part of Government, through the Government pleader, but even that I refrained from doing here, as you have ruled that for putting in such a petition he should receive fees.

3rd. As regards my note on the back of the *chellan*. I would beg of you once more to look at it, and compare it with your letter. The note in my handwriting says "No attestation of confession. No statement of confession in *chellan*. No witnesses sent." You then go on to say "Nor do I see that the meaning of no attestation of *witnesses* can be interpreted into the Mohurrir's omission to superscribe the confession with the prescribed certificate the subject complained of by me." But on comparison you will find that my words are No attestation of *confession*, not, of witnesses, which clearly implies the want of the certificate complained of by you. Also you will note that my remark was not made on the date of the confession but on the date of the *chellan* and that in the roobakaree of suspension the words "বেতামিজি বেয়াইনী" are used, implying of course, all the illegal acts the Mohurrir has been guilty of during the investigation, not the mere fact of his conduct in persisting to release Traheeram as plaintiff and not defendant. The order for suspension is, I think, written on an explanation of the Mohurrir's on that point, but is not the sole cause of suspension, as my roobakaree clearly shows.

4th. Not having the papers of the case before me I am writing completely from memory, but I think I am correct in what I have stated.

From the Additional Sessions Judge of Chittagong to the Magistrate of Chittagong, No. 7, *dated the* 31*st January*, 1859.

I have the honor to acknowledge the receipt of your letter No. 18, under date the 22nd Instant, and with reference to your 3rd paragraph, to state that the words of witnesses was as might be seen from the context a mistake for "of confession;" as you state that you meant the phrase "no attestation of confession" to imply "want of certificate," and as I find on a further perusal of the record the proceeding of the 21st December, 1858, in which the words "indiscreet and unlawful" occur, I beg to state that I am satisfied with the explanation.

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distinct hearing of each witness, so that each witness could hear the very words that fell from the mouth of each prisoner.

The law officer returned a verdict of culpable homicide against prisoners Nos. 1 and 2, and acquitted No. 3. In this finding I concurred, for although confessedly there have been grave irregularities, as above indicated, committed, there can be *no reasonable doubt* from the evidence, the *sooruthal*, the circumstantial evidence and the pleadings of the prisoners Nos. 1 and 2, in this Court, that by their hands the unfortunate man's death was caused, subsequent to arrest, in the most savage and inhuman manner and that, with the aid of six men at least, the treatment he suffered was altogether inexcusable.

Taking therefore into consideration a precedent of the Sudder Court of Musst. Pholussea *versus* Goonje Bebee and another, page 458, volume 3, Part I, the prisoners Nos. 1 and 2, are sentenced to seven years' imprisonment with labor in irons.

The Magistrate's notice has been drawn to a 3rd irregularity, his having verbally directed his assistant to take the evidence of certain witnesses, no proceeding delegating that power being apparent on the record.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The facts of this case appear from the evidence of the witnesses and the admissions of the prisoners to be briefly these. The prisoners when asleep, in their hut, were aroused by the noise made by the deceased, who had cut a hole in the wall through which he had entered, and was in the act of removing their brass vessels when he was discovered. The hut was quite dark and the thief was armed with a chisel. The two prisoners seized him, jumped upon him so as to fracture several of his ribs, and struck him several blows, one of which produced an effusion of blood upon the brain. Several of the neighbours hearing the noise ran in, and the deceased was then bound and dragged into the compound where he shortly afterwards, expired from the injuries he had received. He proved to be a well known thief who had been twice before imprisoned for theft. No assault was committed, however, after the deceased was secured. The injuries of which he died were all received at the time of his capture; and although the attack which the prisoners made upon him, appears from the nature of the injuries inflicted, to have been more violent and more prolonged than was necessary, still it must be considered that it was made in the dark when it was impossible for the prisoners to judge either of the risk which they ran from the deceased, or of the effect of the blows

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2nd. All this correspondence might have been obviated had you appointed the Government pleader or your Peshkar to appear on the part of Government, and I trust to prevent further inconvenience you will resort to that course.

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which they rained upon him. Allowance ought to be made also for the sudden alarm, under the influence of which the prisoners acted, and for the total absence of premeditation or indeed of any opportunity for reflection in the assault which was committed. Taking all these circumstances into consideration, I am of opinion that the punishment inflicted on the prisoners by the Sessions Judge is unnecessarily severe. I accordingly modify it and sentence the prisoners to six months' imprisonment without labor.

The Judge has forwarded copies of correspondence between the Magistrate and himself, from which it appears that the evidence of some of the witnesses in this case was taken before the assistant on the verbal request of the Magistrate, and that the confessions of three prisoners who were examined before the Magistrate were taken down by three different mohurrirs at the same time, in such a manner that the witnesses to the confessions were not able to follow the statements of any one prisoner. These are grave irregularities from which the Magistrate will be careful to abstain in future.

PRESENT:

B. J. COLVIN, J. H. PATTON AND A. SCONCE, ESQS., *Judges*, AND

C. B. TREVOR, D. I. MONEY, AND G. LOCH, ESQS., *Officiating Judges.*

24-Pergunnahs.

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GOVERNMENT ON THE PROSECUTION OF NUSSURUDDEE GAREWAN

versus

TALIB GAREWAN (No. 1,) AND ASHEERUDDY SHEIKH (No. 2.)

Held 1st, that though principal offenders should not be made witnesses under Regulation X. of 1824, still when they have been pardoned and made such, their testimony though open to the greatest suspicion, and therefore requiring a more than ordinary

CRIME CHARGED.—Wilful murder of Busheeruddeen.

Committing Officer.—Mr. H. D. H. Fergusson, Magistrate of the 24-Pergunnahs.

Tried before Mr. E. Lautour, Sessions Judge of 24-Pergunnahs, on the 3rd December, 1858.

Remarks by the Sessions Judge.—The deceased left his home marked on the map B, on the evening of the 6th of November and was missing until the discovery of his body on the 12th idem. This was found, at a spot marked in the map prepared by Mr. Alexander, between two lime *golahs*, in a narrow passage which leads from the road to the common tank.

The body when found was in a state of decomposition, precluding any medical *post mortem* examination. The throat was cut or torn open, but from the state of the body it was not possible to say in what way, or by what instrument, the wound on the throat was caused.

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The police darogah, taking his cue from the standard proverb, which associates crime with the three causes, woman, land, money, found that the former reason did not apply, as the deceased lived with his wife, who was old, and that he had no land, and when he left his house, he had no money with him, but he found that there was a dispute between, Talib, prisoner No. 1, and the deceased, from whom Talib had purchased a hackery and a pair of bullocks for 29 Rupees, and afterwards deceased had re-possessed himself of the property.

Prisoner No. 1, Talib was arrested on the 19th of November with Tuckee (made an approver, witness No. 2).

It appears that on the 14th idem witness No. 10, Khedoo confessed. Shookore confessed on the 20th idem (approver witness No. 1.) Nuseeruddeen confessed on the 18th idem and Aseeruddeen, prisoner No. 2, confessed on the 20th November.

Witness No. 10.

Khedoo states, that Talib, formerly in the employment of the deceased, purchased a hackery and a pair of bullocks from him, in Bhadon for Rupees 29-8, of which the deceased re-possessed himself, leaving to an arbitration, or Punchayet, who awarded their restoration to Talib (prisoner No. 1,) to which the deceased would not agree, hence an action was instituted in the foujdary, the different Garewans contributing to the expenses. Talib prisoner No. 1, lodged with witness No. 1, Sookore prisoner No. 2, Aseeruddeen and witness No. 2, Tuckee, where he saw them in consultation as to how they were to dispose of the deceased and witness No. 1, Sookore and prisoner No. 1, Talib told him eight days previously, one Sunday, that they had murdered Busheeruddeen. Further on Tuesday last, Talib prisoner No. 1, accompanied by a Pyadah, came with a summons to serve upon the deceased.

Witness No. 1.

Sookore states the same particulars as to Talib prisoner No. 1, his purchase of the hackery and pair, and reclamation by the deceased of the property; the arbitration; the award, the recusance of the deceased; the case in the foujdary, and that about a week before the date of the murder Talib prisoner No. 1, had come to lodge with him, witness No. 2, Tuckee, prisoner No. 2, Aseeruddeen and Jakeer Gareewans. On the evening of the murder the deceased passing their house was followed by Talib prisoner No. 1, and whilst he, Tuckee witness No. 2, Aseeruddeen prisoner No. 2, and Jaker, were eating their supper, Talib prisoner No. 1, gave a cough (by way of signal) upon which they went out, he following the others and he saw Talib, prisoner No. 1, throw his *gumcha* over the neck of the deceased and the others seized him and dragged him into the narrow passage, between the lime *golahs*, when they threw the deceased upon the ground and Jaker and Tuckee witness No. 2, and

degree of corroboration, should not be rejected, for, as laid down by the Court in the case of Moteeoollah Sheikh and others (volume 6, Nizamut Adawlut reports, page 125) the exclusion of principal offenders in Sections 3 and 4 of Regulation X. of 1824, appears to be a provision that such persons *should not escape justice by being admitted as witnesses, and the exception is not to the testimony they may give as in itself improper to be received under the law.*

Held 2ndly, that though, as ruled by this Court in its Circular dated 2nd January, 1854, the examination by the Magistrate of a prisoner to whom pardon has been tendered

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must be taken *without oath*, a Sessions Judge alone being competent to receive the statement so tendered on oath, and to order the commitment of the prisoner if he fail to fulfil the condition of his pardon, still the fact that a Magistrate has taken the statement on oath, does not vitiate the evidence, so that it cannot be accepted by the Sessions Court.

Held by three Judges that looking to the contradictory nature of the evidence of the accomplices Sookore and Tuckee, it is not sufficiently corroborated to warrant a conviction upon it, that, consequently, the prisoner Talib is entitled to his immediate release.

Held also by three

Aseeruddeen prisoner No. 2, held him down, whilst Talib prisoner No. 1, cut his throat and afterwards they went away to the tank and washed their hands and clothes.

Prosecutor.

Nuseeruddeen states that he was surety for prisoner No. 1, Talib, to the extent of 16 Rupees, borrowed by him, from Esanchunder, with which Talib prisoner No. 1, purchased the hackery and pair; details all those subsequent particulars in connection with that purchase; Talib prisoner No. 1, told him that he had murdered Buseeruddeen, aided by Sookore, witness No. 1, Tuckee witness No. 2, and Aseeruddeen prisoner No. 2, at 11 P. M. as he was returning home.

Prisoner No. 2.

Aseeruddeen details the same particulars and states that at 11 P. M., he, Tuckee witness No. 2, and Sookore witness No. 1, and Jaker were called by Talib prisoner No. 1, and they went out and Talib prisoner No. 1, from behind threw his *gumcha* over him and Jaker and Sookore witness No. 1, and Tuckee seized him. The deceased was then dragged into the narrow passage between the *golahs* and whilst the others held him, Talib prisoner No 1, cut his throat and this done, they all went and washed their hands and clothes at the tank.

This prisoner confesses before the Magistrate. Tuckee witness No. 2, at first before the Magistrate and the police denied the charge. On the 22nd his answer was recorded in denial of the charge, on the 23rd his confession was taken down in writing. It refers to all the particulars as to cause of quarrel and how a few days before the murder, Talib prisoner No. 1, came to lodge with him, witness No. 1, Sookore, and prisoner No. 2, Aseeruddeen and the result of their consultations was that, Buseeruddeen was a thorough *budjat (beta boro budjat)* and some nights subsequently when at about 11 P. M. he was passing their house, the worse for liquor, Talib gave a suppressed cough and he, Sookore witness No. 1, Aseeruddeen prisoner No. 2, went out and joined Talib prisoner No. 1, who had seized him with his *gumcha*. They all laid hold of him, dragged him into the narrow passage, threw him down and whilst Talib prisoner No. 1, cut his throat, he and the other held the deceased down, (this man is the approver witness No. 3).

The defendants in this Court plead *not guilty*.

The approver witnesses Nos. 1, and 2,* depose to all the particulars of the disagreement between the deceased and Talib the prisoner No. 1, which have been detailed in their confessions and need not be recapitulated. Sookore witness No. 1, says that it was arranged that the deceased should be murdered, as this done, the case in the Magistrate's Court would succeed. The deceased one evening passed by their house and Talib

* Sookore Gareewan, Tuckee Gareewan.

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judges, that the confession of privity to the murder of Busheeruddeen made by Assuruddeen is of too suspicious a nature to allow the Court to act upon it. He is, consequently, entitled to his release.

prisoner No. 1, followed him at 11 P. M. or $11\frac{1}{2}$ P. M when, he Tuckee witness No. 2, Aseeruddeen prisoner No 2, and Jaker were at supper, he again passed followed by Talib, prisoner No. 1, who coughed and they all went out. Talib threw his *gumcha* over him from behind. The others seized him and carried him into the *gullee*, between the *golahs* where he was murdered, in the manner already detailed. The witness Tuckee (approver No. 2,) states that the deceased was at that time drunk. That Talib cut his throat with a knife and threw the knife away into the tank.

* Witness No. 3.

Tarneechurn Sen darogah. To proceeding to hold the enquiry into the case as darogah; to the state of decomposition of the body; that the throat was divided in two; presumes that the throat had been cut; swears to his reports in the case.

† Wit. No. 6, Gopaulchunder Dutt,
" " 7, Kalachand Ghose.

To the mofussil confession of Aseeruddeen prisoner No. 2, depose to that confession having been made voluntarily and to the confession read in Court being that made by the prisoner No. 2

Wit. No. 8, Sejawul Zenah,
" " 9, Sheebchunder.

Speak to the confession read in Court being that made by the prisoner No. 2, and that the same was voluntarily made.

Prosecutor.

Nuseeruddee, the prosecutor, younger brother of Busheeruddeen deceased, details the fact of the quarrel between him and the prisoner No. 1, Talib, which action is still pending in the Pundit's court. He states that his brother's dead body was found on the 27th or 28th of Kartick last; that he had left home six days previously, and he had in vain looked for him at Howrah, Sulkeah and Calcutta; that on the morning of the discovery Sookore (approver witness No. 1) was putting up a mat across the entrance of the passage,* when Ruhmoo witness No. 13, and Domon asked him why he did so, upon which he said there was a dead body there, and upon this he went and looked at it and found it was his master's body and then he came and told the prosecutor, who went to the thannah after having identified the body as that of his brother; speaks to the condition it was in with the throat cut open, and that there were many marks of blood, and that his brother was a *gunja* smoker by habit.

Witness No. 13.

Ruhmoo states that in Kartick last, as he was drawing out his hackery, he saw the approver witness No. 1, Sookore, putting up two mats across the entrance of the passage between the lime *golahs*, there were a number of people standing there, a body had been

* The Magistrate describes this passage as being very dark, vide calendar.

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found there, so he went and informed Digumbaree the wife of deceased and his brother the prosecutor and then went and identified the body as that of Busheeruddeen; speaks to the dispute between deceased and the prisoner No. 1, about the hackery.

Witness No. 18. *Juheeruddeen Pyadah*, states that he accompanied Talib to serve a summons upon Busheeruddeen and stationed him upon the road near the *khal*, whilst he went, as he said, to look for him and in a quarter of an hour returned and said he could not find him, upon which he said, Call for a Chowkeedar to receipt the summons, went to him, and he pointed out the house, upon which he called him by name several times. He took the deponent a roundabout way and on returning, he brought him back viâ the tank in a straight line.

Prisoner No. 1. *Talib prisoner No.* 1, denies the charge and states that the action is preferred in consequence of his prosecution before the Magistrate, as to the hackery and bullocks, refuses to examine witnesses, who are discharged from attendance.

Prisoner No. 2. *Asseeruddeen prisoner No.* 2, states that in consequence of having given evidence for Talib in the hackery case, this charge has been preferred.

The law officer convicts the prisoners Nos. 1 and 2, upon the depositions of the approver-witnesses Nos. 1 and 2. He notes the fact that after the murder, the prisoner No. 1, took out a summons and a warrant against the deceased. He finds that it is proved, that one night in Kartick last the deceased passed by the prisoner's house and on his return was seized by Talib who, with the prisoner Asseeruddeen No. 2, and the approver-witnesses Nos. 1 and 2, dragged him into the narrow passage between the lime godowns, and Asseeruddeen prisoner No. 2, held his hands, and the approver-witnesses Nos. 1 and 2, held his feet, whilst Talib cut his throat. He finds the prisoner No. 1, guilty of wilful murder and the prisoner No. 2, as aiding and abetting in it and that they are liable to *acoobut shudeed.*

This is a murder perpetrated under circumstances admitting of no extenuation. It was the result of premeditation and it arose out of the purest malice. It appears that the deceased reclaimed the hackery and bullocks, on not being paid for them in part or in full. This led to a reference to arbitrators and as the deceased would not abide by their award, the prisoner No. 1, got the different garreewans to contribute the necessary expenses, and he proceeded in the Magistrate's court. From the darogah's report it appears that this action was instituted on the 16th September, on the 28th of October he caused the attendance of his witnesses, on the 3rd of November, he

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deposited the necessary fees for a summons which he took out on the 8th or two days after the murder, and applied for a warrant on the 12th, the day when the body was discovered. From the statement of Tuckee approver No. 2, it appears that the deceased was more or less drunk, when Talib threw his *gamcha* round his neck, from behind, and he and the others dragged him into the narrow passage and Talib cut his throat. I am of opinion that this is not a case in which I ought to send up any recommendation for any sentence less than capital. If Talib be the principal, the second prisoner had not the same malicious feelings against the deceased that Talib had. Without that provocation, his participation is wholly without any such influence upon the angry and vindictive passions as would operate upon the mind of Talib prisoner No. 1.

I would treat the two prisoners as principals and sentence them capitally to suffer death in the usual manner.

Remarks by the Nizamut Adawlut.—(Present: Messrs. B. J. Colvin, J. H. Patton, A. Sconce, C. B. Trevor, D. I. Money, and G. Loch.)

Mr. D. I. Money.—This case is attended with difficulty and has been rendered more difficult by the proceedings held on the trial by the courts below.

There is no doubt, I think, but that Busseeruddeen met with a violent death, and the evidence on the record points to the prisoners as the murderers.

But the approver witness No. 2, Tuckee Gareewan, was not, in my opinion, a person to whom under the provisions of Regulation X. of 1824 a pardon could be fitly tendered. From his own confession, it was shewn that he took part in the murder and that he with others held down the deceased, while the prisoner, Talib, cut his throat. He participated in the act as well as in the design, and was therefore a principal, to whom under the law, a pardon could not be tendered. In the preamble of Regulation X. of 1824, it is expressly stated, that the object of the law was the offer of conditional pardon to *accomplices* or *accessaries* with the view of discovering the *principal* offenders. Under Clause 1, Section 3, of the Regulation, Magistrates are empowered "to tender a pardon to one or more persons *(not being principals)* supposed to have been directly or indirectly concerned in, or privy to, the offence, and by Clause 1, Section 4 of the Regulation, Magistrates are enjoined to be cautious not to tender pardons to *principal offenders* and in no case to make the *offer to accomplices* or *accessaries* without a reasonable prospect of securing the apprehension and conviction of the principal offenders by whom the crime may have been perpetrated." As therefore the witness No. 2, was a *principal* offender, the pardon should not have been tendered to him, and I cannot accept his evidence against the prisoners.

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With regard to the testimony of the witness, No. 1, it does not appear from his own confession or any other evidence, except that of the witness No. 2, that he was a *principal* in the murder, although it is highly probable, as the Magistrate admits, that he assisted in it. The pardon, therefore, under the Regulation cited, might have been tendered to him, but I do not find that he was made an approver under its provisions. He appears to have been examined on *oath* immediately after his confession, whereas the law prescribes, see Clauses 2 and 5, Section 3, that the examination in the first instance shall take place without the prisoner being put upon his oath. His testimony, therefore, being taken in contravention of the rules laid down for the examination of such persons must also be rejected. Under these circumstances, there is no evidence against the prisoner, No. 1, and I would acquit him, and direct his immediate release.

There remains only the confession of the prisoner, No. 2, before the police and the Magistrate, which is proved to have been voluntarily given, and which incriminates the prisoner to the extent of his being present, and witnessing the perpetration of the deed, and concealing it afterwards. I convict him consequently, of privity to the murder, and would sentence him to seven years' imprisonment with labor.

It is to be regretted that owing to the want of due precaution in acting up to the provisions of Regulation X. of 1824, there should have been, as regards the prisoner No. 1, a failure of justice.

There are two or three inaccuracies in the Sessions Judge's letter, perhaps from clerical inadvertence. But he was, in my opinion, in error in not taking the testimony of the witness, No. 10, Khedoo Fotdar, who might, it would appear from the Magistrate's calendar, have given important evidence.

Mr. J. H. Patton.—I entirely concur with my colleague, Mr. Money, in the reasons he has recorded for considering the approver-witness No. 2, Tuckee Gareewan, a principal, and one to whom, under the law, a conditional pardon could not have been tendered. I also agree with him in thinking that witness No. 1, in the calendar, Shookore Gareewan, was not made an approver in strict conformity with the provisions and requirements of Regulation X. of 1824, but I differ with him in regard to the expediency of passing sentence in the case in its present state and in respect to the rejection of Shookore's evidence. The terms of that individual's confession, when arrested and brought before the police, distinctly disclose the fact that he took no part in the murder; but stood aloof, looking on. He was clearly then not a principal, and therefore a fit object for the tender of conditional pardon, and the mere informality

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committed by the Magistrate, should not, in my opinion, render nugatory evidence which is consistent throughout.

With reference to the approver-witness, No. 2, Tuckee Gareewan, I would, under Clause 3, Section 5, of the above law, annul the proceedings held and the orders passed by the Magistrate, and direct his committal for trial on the charge of wilful murder, taking his defence and examining the witnesses against him *de novo*.

I would also require the Sessions Judge to record the examination of the witnesses, Khedoo and Miezuddeen, Nos. 10 and 11, questioning them closely as to what they heard from the prisoner No. 1, Talib Gareewan, regarding the deceased's fate, and whether any and who were present at the time of their making such statement. These persons should be examined by the Magistrate and forwarded in the usual manner to the Sessions court. For the reasons above stated, I would suspend the issue of final orders and remand the case.

Mr. A. Sconce.—This case has been heard by two Judges, of whom one judge, Mr. Money, proposes finally to dispose of it by acquitting the prisoner, Talib, and convicting the prisoner, Asseeruddeen, of privity to the murder of Buseeruddeen, while the second, Mr. Patton, proposes to send back the trial to the Sessions Judge in order that additional evidence may be recorded.

Objection is taken to the admissibility of the evidence of two leading witnesses Shookore and Tuckee, to whom by the Magistrate, pardon had been tendered under Regulation X. of 1824, and I will consider this point as it affects each of these men in succession.

First as to the witness, Shookore, he was examined by the darogah on the 20th November and by the Magistrate on the same date. He stated on both occasions, that he had seen the murder committed by others without taking himself any part in the crime. Accordingly, on the 24th November, the Magistrate being of opinion that at the most on his own statement, a charge of privity might lie against him, recorded a proceeding in which he pardoned Shookore and directed his deposition to be taken on oath, and in conformity with this order, on the same date, Shookore was examined on oath as a witness.

The admissibility of the witness Shookore's deposition at the Sessions trial is supposed by Mr. Money to be affected by the Magistrate's examination being taken on oath, as being opposed to the provisions of Section 3, Regulation X. of 1824. The first Clause of this Section empowers a Magistrate to offer a pardon on condition of the person pardoned, making a full disclosure of all he knows, and the second Clause provides that the disclosure so made should not be made on oath. Both of these clauses are simply confined to the case in which it is

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thought necessary to elicit information from a person cognizant of the circumstances under which a crime has been committed. But Clauses 4 and 5 of the same Section refer to a different case. These Clauses provide for the case in which a pardon was proposed to be tendered with a view to obtain the evidence of the accomplice pardoned at the trial. For such a purpose, by Regulation X. of 1824, a Magistrate was not competent to offer a pardon, being required to apply to the Superintendent of Police for his sanction. It was therefore directed that the Magistrate should, in the *first instance*, examine the person in question, without putting him on his oath, and submit the examination for the orders of the Superintendent of Police. But the law, in this respect, was altered by Section 7, Regulation I. of 1829, which enables Magistrates to tender a pardon without reference to any authority, and therefore the earlier provision by which a preliminary examination without oath was inculcated, ceases to have effect, as the condition which necessitated it has been also abrogated. A Magistrate being legally competent to tender a pardon, it necessarily follows, in my opinion, that he is competent to examine the person so pardoned as a witness. This is the course which the Magistrate has pursued with respect to the witness Shookore, and the course so taken it seems to me is not contrary to the law.

Next as to the witness Tuckee. Both my colleagues concur in opinion that this person, from the terms of his confession, took part in the murder and that being a principal, to him, by law, a pardon could not be tendered. I observe that Tuckee, when examined by the darogah on the 20th November, denied any knowledge of the crime, and that on the 22nd November to the Magistrate he repeated this denial, but that next day, being brought up he declared it to be his wish to tell all he knew. On this occasion he admitted that he, with two others, held the hands and legs of Buseeruddeen while Talib cut his throat, and on the 24th November the Magistrate pardoned him and made him an approver. Such being the declared share taken by Tuckee in the murder, the question arises whether he has been legally made a witness. The words of the law are, in Clause 1, that a pardon may be "tendered to one or more persons (not being principals) supposed to have been directly or indirectly concerned in or privy to the offence." And in Clause 4, that a pardon may be tendered to any "accomplice or accessary." Now, from this language, it is clear that a pardon may be offered to an accomplice, that is to one, as defined in the 1st Clause, who was *directly concerned* in the commission of the offences, provided only that he shall not be the principal offender. I understand from this language that a person supposed to be present and to have aided and abetted the perpetration of the offence, may be pardoned for

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the purpose of being made a witness. The degree of aid supposed to be so afforded is not defined. This remains a question of more or less. But at the same time the chief offender may not be pardoned, and as the guilt of Tuckee is not that of the principal or chief offender, it seems to me that the Magistrate has not illegally exercised the discretion which the law vests in him.

The questions involved in the pardons tendered to both witnesses are of much general importance, and as I differ from my colleagues on both, I think the trial should be referred to the Court at large.

Mr. B. J. Colvin.—This case has been before three judges of the Court. Messrs. Patton and Money agreed in rejecting the evidence of Tuckee witness No. 2, inasmuch as he is a principal in the murder while Mr. Patton did not agree with Mr. Money that the evidence of Shookore witness No. 1, was invalidated by its having been taken on oath by the Magistrate after his confession. Mr. Sconce would not reject either witness's evidence, and is of opinion that Shookore, had been properly sworn.

First, as regards the evidence of Tuckee, I concur with Mr. Sconce in admitting it according to the precedent dated 13th April, 1849, in the case of Mottecoollah Sheikh and others, in which it was laid down that the evidence of *principal offenders* was not by reason of their being so, inadmissible. The exclusion of principal offenders is therein said to be a provision that they should not escape justice by being made witnesses. The exception is not to the testimony they may give as in itself improper to be received under the law. Applying this principle there is no reason why Tuckee's evidence should be excluded. Then as regards that of Shookore, the Magistrate with reference to Circular Order of 2nd January, 1854, erred in recording his deposition on oath, but this was simply an informality, and does not thereby make his deposition properly recorded in the Sessions court inadmissible. I now proceed to the case itself. The murder was first discovered on the 12th November, when the body was in too decomposed a state for examination. It was found in a narrow dark lane between two *golahs*, and the immediate cause of its discovery was that the witness Shookore was seen putting up mats at the end of the lane which opened upon the thoroughfare and when asked why, his reply was that there was a corpse there. It seems to have been difficult to make out how death had been brought about. The darogah discovered what may be called an opening in the throat, which he therefore supposed had been cut. The next day the 13th an investigation of the spot was made and marks of blood were discovered. On that same day the prosecutor, the brother of the deceased, who had been informed of

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the discovery of the body went to the thannah, and then detailed a quarrel which had been between the prisoner, Talib and the deceased, and so laid the foundation of the charge against him. The next day one Khedoo, who had been named by the prosecutor, gave his confession before the darogah in which he repeated the story of the quarrel and that Talib and others had not only threatened, but had allowed they had done for the deceased. Nothing further occurred till the 18th, when the darogah sent in Moozudin as implicated in the crime, but the Magistrate did not regard him in that light, and made him a witness, as he also subsequently made Khedoo. The two prisoners and the approver witnesses Shookore and Tuckee were brought to the thannah on the 9th November, and on the following day the prisoner Talib and the witness Tuckee were sent to the Magistrate with their answers in denial of their guilt, while on the same date the prisoner Aseer Sheikh and the witness Shookore were forwarded as confessing prisoners. Tuckee maintained his innocence before the Magistrate on the 22nd November, but is said to have voluntarily offered on the next day to disclose matters, which he did on that day, and the result was that he and Shookore were made witnesses against Talib and Aseeruddeen. It is necessary to examine the evidence of the approver-witnesses, and in doing so, there are most remarkable discrepancies; for instance before the Magistrate Tuckee said he held the deceased's hands while Shookore and Aseer held his feet, but in the Sessions court he deposed that the three held his hands and feet, but who held which, he could not say; again Shookore has consistently implicated Zakir as of the party, while Tuckee has omitted all mention of his name. This Zakir has also been named by Aseeruddeen in his confession, but Aseeruddeen has, with regard to Shookore, made very different statements. To the police he stated that Shookore assisted Zakir and Tuckee in holding deceased by his hands and feet, but in the Magistrate's court, he deposed that Zakir and Tuckee alone held him, while he and Shookore stood aloof. There is also much difference of statement in the depositions as to the weapon used by Talib. All accounts of the witnesses agree that he threw a cloth over the deceased's face and threw him down, and while the others held him, Talib is said, in some parts of the evidence, to have cut his throat with a knife, while elsewhere the weapon is only spoken of as supposed to have been a knife. It is to be observed that the time of perpetration of the deed was night, and the lane so narrow and dark that the Magistrate represents that it is difficult to see from one end of it to the other, except in broad day light. Now as a knife could not easily be discernible in such a place at night, it follows that the witnesses who depose to its use or to the use of something resembling a knife cannot but

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be supposed to speak vaguely. Then as regards the spot. The murder is said to have been committed in a lane open at both ends, at one end of which was a public privy from whence the people using it could see down the lane. Dark as the lane was, it was by the Magistrate's description pervious to light in the day time. How then did the body escape detection for so many days. This circumstance makes me very doubtful of the evidence which says the murder was committed in the lane and the body left there.

As against Talib I consider the evidence of the approvers quite insufficient for conviction. The precedent of 13th April, 1849, enjoins that such testimony should be admitted with every precaution that too much weight is not attached to it, if unsupported, and Clause 2, Section 4, Regulation X. 1824, enacts that in cases in which there may appear no prospect of obtaining other evidence than the deposition of an accomplice or accessary, the offer of a pardon is not to be sanctioned. It is plain from this that corroboration of the approver's evidence is required, whereas it is not only wanting here, but the evidence is in itself open to grave suspicion. I would therefore acquit Talib. Against Aseeruddeen besides the evidence of the approver which I cannot credit, there is his own confession, but although he is proved to have given it freely and voluntarily, it is to be considered whether credit can be attached to it. I have already pointed out a striking discrepancy between his two statements regarding Shookore, and I think that the same objection applies to its truth that does to the evidence of the approvers, that the body of deceased if murdered in the lane and left there would have been visible at an earlier date, and I doubt the truth of the murder in the lane. I therefore cannot convict Asseeruddeen even upon his own confession.

Mr. A. Sconce.—The reasons which induce me to consider the deposition of the witnesses Shookore and Tuckee to be admissible as evidence, I need not now repeat. As to the former I retain the opinion already expressed, that even under the provisions of Regulation X. of 1824, his legal position as a witness is not affected by the fact that the Magistrate who had formally pardoned him, subsequently examined him on oath: but I had not adverted to the course prescribed to Magistrates in the Circular Order of 2nd January, 1854, and while I am ready to accept the ruling therein laid down, that Magistrates should abstain from examining on oath, persons whom they may have pardoned with the view of obtaining their evidence, it nevertheless appears to me that an examination on oath, by a Magistrate after pardon, does not affect the legal competency, as a witness before the Sessions Judge of the person examined.

Using then the depositions of Shookore and Tuckee as legal evidence, I come to consider its effect in substantiating the

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guilt of the prisoners under trial. What they severally say is strictly this; Shookore, that Tuckee, Zakir and Asseer held the hands and legs of the deceased while Talib cut his throat; and Tuckee that he Shookore and Asseer held the deceased while Talib cut his throat. So far then if the evidence of the two eye-witnesses were unexceptionable and could be relied upon, it would suffice to convict the prisoners. But the disclosures of the witnesses were made after material delay and under peculiar circumstances and being uncorroborated by other evidence may not, it appears to me, be safely accepted.

Busseeruddeen the deceased, disappeared on the evening of the 6th November. His dead body was discovered on the 12th November, in a narrow dark passage that runs between two lime *golahs* situated between and at no great distance from his own house and the house occupied by the prisoner and the two approvers. On the 14th November one Khoodee told the darogah that on Sunday the 7th November he had heard from Talib and Shookore that they had killed Busseeruddeen, but nothing came of this information up to the 19th November, and on this date, the Magistrate expressing his dissatisfaction at the result of the investigation directed another darogah to co-operate in the enquiry with the first. Next day, that is on the 20th November, Shookore admitted that he looked on while Talib and others perpetrated the murder. On the same day Tuckee (having been arrested on the 19th) denied his guilt. To the Magistrate on the 22nd November he adhered to his denial: but being again brought up on the 23rd, he declared it to be his wish to tell all he knew. On the 24th November, both Shookore and Tuckee were pardoned by the Magistrate and made witnesses.

The deposition of Shookore and Tuckee have received, as I have said, no independent corroboration. We have indeed the indication of the existence of other evidence. There is the remarkable statement of Khedoo already adverted to, and of the same character is a statement by one Moizuddeen. Both said that they had been told out and out by Tuckee that he had killed Busseeruddeen: but the Sessions Judge declined to examine these men, and their statements it appears to me, do not bear upon the face of them, that degree of credibility which might render it advisable to send back the proceedings for further trial.

Under these circumstances, dealing with the evidence mainly as against the principal criminal Talib, it does not, I think, warrant his conviction. In one important particular the approvers differ. Shookore professes to have been a looker-on and no more, whereas Tuckee asserts that Shookore took the same part as he himself took in holding the deceased, but what mainly affects the credibility of their testimony (they being

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either privy or accomplices in the crime) is the tardiness of their disclosures and the apprehension raised that in the end they spoke to save themselves at the expence of others. Indeed it would seem to be against the policy of the law to accept the simple accusatory testimony of an accomplice against his associates. Clause 2, Section 4, Regulation X. of 1824 declares that a pardon should not be offered in cases in which there may appear no prospect of obtaining other evidence than the deposition of an accomplice or accessary. Upon the whole then I am of opinion that the prisoner Talib must be acquitted.

The case of the prisoner Asseeruddeen is different. Not that the evidence of the approver-witnesses can be turned against him any more than against Talib, but Asseeruddeen by his attested confessions, delivered both before the police and Magistrate, admitted his privity to this crime. About 11 at night, he said, Talib called Tuckee, Zakir, Shookore and himself. They three first went out of the house, he followed, and while he stood four yards off, he saw Talib cut Busseeruddeen's throat while the others held him. Upon this confession, I would convict Asseeruddeen of privity to the murder, and sentence him as proposed by Mr. Money.

In disposing of this case, the question presented itself whether, as suggested by Mr. Patton, it was competent to this Court to quash the pardon offered to Tuckee by the Magistrate and leave him for trial under his own confession previously delivered, but it is now too late. No doubt Clause 3, Section 5, Regulation X. of 1824, empowers this Court to annul the tender of pardon made by a Magistrate, if it should have been granted on insufficient grounds; but this provision appears to be limited to a revision of a Magistrate's proceedings before trial; and after the approver has been examined at the trial, I think it must be concluded from Clause 1, of the same Section that he can be himself tried only, if it be shown in evidence that the approver has wilfully concealed essential facts or given false evidence against an innocent person. It is possibly to be regretted that the Magistrate should have pardoned Tuckee: by his own confession, he, an active accomplice in the murder might have been convicted, but at this stage of the proceedings he must benefit by the pardon conferred on him.

Mr. C. B. Trevor.—This case has been referred to three Judges at the instance of Mr. Sconce, in consequence of a difference of opinion expressed by the two Judges who first heard the case as to the admissibility of a portion of the evidence for the prosecution, and his own difference from both of them on the same points.

It appears that the witness No. 1, Shookore Gareewan and witness No. 2, Tuckee Gareewan confessed before the Magistrate to having been concerned, to a greater or lesser extent,

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in the murder of a person named Busseeruddeen. A pardon was subsequently tendered to them and they gave their depositions accordingly.

In the confession made by Tuckee, witness No 2, he acknowledged that he held the hands, and Shookore and Asseeruddeen, prisoner No. 2, the feet of the deceased, whilst Talib, prisoner No. 1, sitting upon his breast, cut his throat. In other words, he acknowledges that he was a principal in the murder of Busseeruddeen deceased. Messrs. Money and Patton consequently held that he was not a person to whom, under Regulation X. of 1824, Section 3, a pardon could be legally tendered and that his evidence was inadmissible.

In the confession made by Shookore, witness No. 1, he states that Zakir, Tuckee, and Asseeruddeen prisoner No. 2, carried deceased in their arms into a narrow *gully* and threw him down there, and that Talib, prisoner No. 1, sat on his breast and with some instrument or other cut his throat, and that he, Shookore, saw this, standing about five or six cubits off. After making this confession, his deposition was taken by the Magistrate *on oath*. Both Messrs. Patton and Money are of opinion that this person was a fit object for a pardon. Mr. Money, however, considered that by the taking of his evidence on oath by the Magistrate in contravention of Section 3, Regulation X. of 1824, his evidence before the Sessions court was invalidated, whereas Mr. Patton considered that the mere informality committed by the Magistrate did not render his evidence of no effect.

Mr. Sconce was of opinion that the guilt of Tuckee, as disclosed in his own confession, was not that of the principal or chief offender, and therefore the Magistrate in tendering him a pardon and making him a witness had not illegally exercised the discretion which the law vests in him, and also that, in taking the evidence of Shookore upon oath the Magistrate had not acted illegally. Mr. Sconce would therefore accept the evidence of both witnesses. As, however, the questions raised are of importance, and difference of opinion existed on them, the case was referred to a full bench of three judges in order that the points might be authoritatively determined and the whole case heard by three judges.

Under the opinion expressed by them, Mr. Money would release prisoner No. 1, there being no evidence against him, and would find Asseeruddeen prisoner No. 2, guilty of privity to the murder of Busseeruddeen on his own confession, and Mr. Patton would annul the proceedings held and the order passed by the Magistrate as to witness No. 2, and would direct his committal for trial on the charge of wilful murder, and he would remand the case in order that certain evidence, which the judge had omitted to take, might be recorded.

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Looking first, to the case of Tuckee, witness No. 2, it seems to me clear that he should not have had a pardon tendered to him. His confession makes him neither a simple accomplice nor accessary in the murder of the deceased Busseeruddeen, but a principal. He held the hands whilst another cut his throat he was legally as much a principal as Talib, and therefore he is clearly, under the words of Sectiox 3 of Reg. X. of 1824, one to whom, as a general rule, a pardon should not have been tendered.

But granting that he is a person to whom a pardon should not have been offered under the law above cited, still when such a pardon has been tendered, then his evidence is not, for that reason, inadmissible. •As remarked by this Court in the case of Moteeoollah Sheikh and others.* "The excluson of principal offenders in Sections 3 and 4, appears to be a provision that such persons should not *escape justice by being admitted witnesses, the exception is not to the testimony they may give as in itself improper to be received under the law.* Such testimony, however, is open to the greatest suspicion and should be admitted with every precaution; that too much weight is not attached to it, if unsupported." The tendering of a pardon to a principal is in short one of those acts which should not be done, but which, being done, stands good, and which at the same time, in order to be safely acted upon, requires an unusual amount of confirmation and support from other quarters. Under this view, it appears to me that the evidence of Tuckee is admissible in the present case.

* Vol. 6, Nizamut Adawlut Reports, page 125.

Turning to the case of Shookore, witness No. 1, it appears that his confession made him only an accomplice. He was, therefore, clearly a person to whom a tender of pardon could properly be made. It has been suggested, however, that inasmuch as the Magistrate has taken his deposition on oath, his evidence has become inadmissible.

Authority and reason, it appears to me, both concur in showing that the Magistrate, in taking his deposition on oath, acted erroneously. The authority is the Circular of this Court, dated 2nd January, 1854, wherein it is ruled that as examination by a Magistrate of a prisoner to whom pardon has been tendered, must be taken without oath, and that a Sessions Judge alone is competent to receive the evidence so tendered on oath, and to order the commitment of the prisoner, if he fail to fulfil the conditions of pardon; and reason points the same way, for the condition of the pardon being the *giving full and true information on oath before the Sessions court,* the offences in which pardon can, under Regulation X. of 1824, be offered all being cognizable in that court alone, it would be premature to bind the party by his oath before the Magistrate, and thus to inter-

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fere with the condition on which alone a pardon was tendered; moreover, by such interference, the free action of the Sessions court against him would be impeded, should the condition not be strictly fulfilled by him, for it would be difficult for the Sessions judge to order the commitment of the prisoner for the crime regarding which he conditioned to give evidence before him, if his deposition on oath had been already taken by the Magistrate; though, doubtless, under these circumstances, according to the law current in the *Mofussil* he might be committed for perjury.

The distinction taken by Mr. Sconce in his note of the 28th January as to the subjects to which Clauses 1 and 2, and Clauses 4 and 5 of Section 3, Regulation X. of 1824, severally, refer, seems to me to be sound, and in his remarks regarding the fact of the modification of this law made by Section 7, Regulation I. of 1829, I entirely coincide; but it appears to me that the words "*in the first instance*," as they occur in the 5th clause of Section 3, Regulation X. of 1824, were used in opposition to the examination of the witness, *in the second instance before the Sessions Court*, and not to a second examination on oath which might take place *before the Magistrate* after the superintendent's sanction to making the party a witness had been received; and if so, they, notwithstanding the modification of the law which has taken place, as to the necessity of the sanction of the superintendent of police, afford no ground for the doctrine that a Magistrate can at the present day legally take the deposition of a party to whom a pardon has been tendered under Regulation X. of 1824, on oath, as he would that of any other ordinary witness.

But though the deposition of a prisoner to whom a pardon has been tendered should by the Magistrate be taken without oath, its being taken with oath cannot vitiate it. The testimony, irrespective of the oath, is there, and the condition on which the pardon is tendered stands also; if the party acts up to these conditions whether the deposition has been taken by the Magistrate on oath or not becomes immaterial: if he does not fulfil them, difficulty may, as before observed, occur in the action of the Sessions Court towards him, under Section 5 of Regulation X. of 1824; but that difficulty is quite unconnected with the receipt of his evidence by the Sessions Court which should record and consider it, irrespective of an erroneous act committed by the Magistrate. It appears to me, therefore, for the above reason, that the evidence of Shookore, witness No. 1 is in the present case admissible.

I now proceed to a consideration of the merits of the case. The corpse of the deceased was found on the 12th November in a narrow passage between some salt golahs, having at one end the public road and the house in which the witnesses

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Tuckee and Shookore and the prisoners Talib and Asseeruddeen resided and at the other a public privy. The alleged immediate cause of the discovery of the corpse was the act of the witness Shookore who was observed on the above date, putting up a mat at the end of the passage and who, when asked why he was so acting, said, there was a corpse in the passage and that he was putting up the mat to ward off the stench arising from it.

Information was then given to the police and on the 12th and 13th November two different inquests were held; the first had reference simply to the appearance of the body, and the second to the appearance of the spot in which the body was found. The body was in such a forward state of decomposition that no *post mortem* examination could be held by the Civil Surgeon. The Darogah, however, reported that there was an aperture in the throat, and much blood all about and on the mat wall of the golahs on either side of the lane in which the corpse was found. The brother of the deceased, Nusseeroodeen, recognized the corpse as that of his brother Busseeroodeen, who had been missing for six days previously, and for whom he had made a fruitless search. He then entered into a lengthy statement of the feud which existed between his brother and the prisoner Talib, and states his conviction that he had been murdered by him.

On the 14th November, the statement of one Khedoo was given. He stated all the circumstances of the quarrel between Talib and the deceased, according to which statement their caste-fellows generally seem to have considered Talib in the right; that fifteen or sixteen days previously Talib had come and remained with Tuckee and Shookore who with Asseeroodeen, the prisoner No. 2, live together in a house facing the narrow passage in which the corpse was found; that twelve or thirteen days ago he was going to the ghat and saw Shookore, Asseeroodeen, Tuckee, Zakir, and Talib in consultation; that at first, they said nothing; but on his remarking that he was not a stranger, they said the deceased was a bad one and they would serve him out; that five or six days afterwards Talib and Shookore told him that they had done for the deceased.

This man was sent in and made a witness by the Magistrate on the 4th November, and he gave a deposition, repeating the facts which he had detailed before the police; but though his name is in the calendar and his evidence considered by the committing officer to be of considerable moment, I do not find that his deposition was taken by the Sessions Judge.

On the 18th November, Moizuddeen gave to the police, evidence very much to the same effect with that of Khedoo, he was apparently sent up by the Magistrate to the Sessions Judge. His evidence, though as corroboratory it was very mate-

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rial, has not been taken by the Sessions Judge. On the 19th November, the Magistrate ordered a new Darogah to proceed to the spot, the negligence of the Chowkeedar to be enquired into, and he directed that a reward of 200 Rupees should be offered to any one giving information leading to a conviction at the Sessions.

On the 19th November, Talib, prisoner No. 1, Asseeroodeen, prisoner No. 2, and Shookore were arrested, and Talib and Tuckee were sent in to the Magistrate. They, on the 20th November, before the Magistrate, denied all knowledge and complicity in the crime; but, subsequently, that is, on the 22nd November, Tuckee, though under what circumstances does not clearly appear, then expressed a wish to say something more and made a confession, on which a conditional pardon was tendered to him and he was made a witness on the 24th November.

On the 20th November, Shookore confessed before the police to his complicity in the murder. He was on that day sent in, and repeated his confession and was made a witness by the Magistrate on the 24th November. Asseeroodeen was arrested on the 19th November, confessed before the police on the 20th November, and before the Magistrate on the same date.

From the above statement, it appears that the case entirely rests upon the evidence of Tuckee and Shookore. Consequently, it is of importance to consider the nature of their statements before the Sessions Judge. Tuckee on the 3rd December, after detailing the enmity which existed between Talib and the deceased, deposed that, in the month of Kartick, Buseeroodeen, whether drunk or not he knew not; came near his house about 10 or 11 o'clock P. M. he was alone, going to the North-west; that Talib coming from some place or other threw either his own or the cloth of the deceased over his mouth; that Talib making a noise with his throat, he, Shookore, and Asseeroodeen, came out and seized hold of Buseeroodeen and carried him into the passage between the golahs and threw him on the ground; that in Talib's hand there was a knife with which he struck a blow on the throat of the deceased; that they then seized his hands and feet, but who seized the hands and who the feet deponent does not remember. Talib drew the knife across the throat of deceased; that the deceased had no power to say anything; that after his death witness, Shookore, Asseeruddeen and Talib washed in the tank and witness presumes that Talib threw the knife into the tank; that they then all went home; that that night Talib remained in his, witness's house, and in the morning went away; that the corpse remained uncovered with clothes; that from the place in which the corpse was, the road can be seen about twenty cubits distant; whether people going to the public privy could see the

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corpse or not he is unable to say; that he, Shookore, and Asseeruddeen had consulted five or six days previously that they should kill Busseeruddeen, and Talib said, When I make a noise, do you come. Talib went away at evening time on the day of the murder; where he went witness knows not.

On turning to his previous statement before the Magistrate with a view of testing the credibility of that made to the judge, it appears that he then confessed clearly to having seized the hands of the deceased whilst Talib cut his throat. On other points the statements are much to the same effect.

The witness No. 1, Shookore, deposed before the Sessions judge, that he and Asseeruddeen and Tuckee witness No. 2, live in the same house; that on returning from Balliaghatta, he saw that Talib was remaining in their house; that he saw Talib, Asseeruddeen, Tuckee and Zakir, two or three days consulting together and asked them what they were talking about and they said, You are a child; what do you know? that one day they agreed that if they could do for Busseeruddeen the case then pending would succeed; that about seven or eight days afterwards at evening time he, witness, was feeding his cattle before his house and Buseeroodeen came along the road and went towards the west; that Talib followed him, but nothing was in Talib's hand; that subsequently, about 11 or 11½ P. M. he, Tuckee, Asseeroodeen, and Zakir, having eaten, were sitting, when Buseeroodeen first, and afterwards Talib, came past; that Talib made a noise with his throat, but Busseeruddeen, deceased, did not know that Talib was following him; that Asseeruddeen, Tuckee, and Zakir hearing Talib's noise went out and he followed to see where they went; that he saw Talib throw a cloth over the mouth of the deceased and they dragged him into a passage between the *golahs;* that he, witness, then said, What are you doing? that Talib said, Hold your tongue, if you speak I will accuse you of the murder and cause you to be hung; that afterwards Tuckee and Zakir seized his feet and Asseeruddeen deceased's hands and placed them on his breast; that Talib then applied an instrument to his throat and killed him, whether a knife or not, witness cannot say; that he went home and the others went towards the tank; that five or six days afterwards the body was discovered; that there are many houses on all sides of the place in which the corpse was discovered, and the public road was only twenty or twenty-five cubits distant. No people go up the passage, nor was the place where the corpse fell, visible from the road, but it was from the public privy; that he stood five or six cubits off whilst deceased was murdered, the night was dark; that a bad smell arose and a man from the eastern districts seeing the corpse told him to put up some mats, which he did.

On comparing these statements with those made by him,

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before the Magistrate and the police, it appears that, before the last authorities, the witness had stated that the day after the murder he was speaking to Khedoo, the witness, when Talib then going by said, We have served out the *sala;* that Talib, and Shookore, and Asseeruddeen and Zakir told him that if he said anything he would be hung, but as Khedoo and Moizudin have spoken, he also has broken silence.

The prisoner Talib pleads *not guilty*. He acknowledges that he has had a quarrel with the deceased, but denies all knowledge of his murder, he calls no witnesses.

The prisoner Asseeruddeen before the police and the Magistrate confessed to having witnessed the murder of the deceased by Talib, Tuckee, Shookore, and Zakir, but alleges that he took no part himself in it. Witnesses have appeared to prove that these confessions are voluntary. Before the Sessions Court, Asseeroodeen pleads not guilty. He calls no witnesses.

Besides the evidence of Tuckee and Shookore, above detailed, there is none in any way connecting the prisoners at the bar with the murder of the deceased. It is unnecessary, therefore, to notice the depositions of other parties. Looking to these depositions, it seems to me that, granting even that they were worthy of credit, it would not be in accordance with the principle laid down in the case of Moteeoollah Sheikh Sirdar and others, above cited, to found a conviction on evidence of such nature, unless it were strongly confirmed and corroborated, not in the degree in which the evidence of mere accomplices must, according to the law of evidence, and impliedly under Clause 2, Section 4 of Regulation X. of 1824, be corroborated, but in some higher and especial degree. Moreover, relying upon these depositions, it might be a question whether the case should not be remanded to the Judge in order that, as proposed by Mr. Patton, the evidence of Khedoo and Moizuddeen, whose names are entered in the Magistrate's calendar, should be taken with a view of obtaining that corroboration; but, under the unfavorable view of the depositions taken by me, such a course becomes unnecessary, for, on the supposition that the above named parties, Khedoo and Moizuddeen, deposed exactly as they had before the police, the evidence would not, to my mind, be sufficient for conviction.

It will be observed from the statement given above, that though the police, through the evidence of Khedoo, are represented to have obtained a clue to the murderers of the deceased on the 14th November, that was not quickly followed up. In short, for five days nothing material was done, and so satisfied was the Magistrate that the enquiry had miscarried, that he sent a second Darogah to assist in the investigation. This delay, seeing that none of the parties named by Khedoo absconded or attempted to abscond, is not satisfactorily accounted

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for and throws a suspicion over the proceedings of the police. This suspicion arising from the conduct of the police is not lessened when considering the nature of the statements made by the parties who have been made witnesses in the case. There are discrepancies in their evidence as to the part taken by each accomplice in the crime and also as to the names of those concerned, but these seem to me to be of lesser moment than the improbabilities arising from the entire statements themselves. That Talib may have had a hand in the murder of the deceased is possible, *but that it was committed in the mode described in the depositions of the witnesses, seems to me most improbable.* The witnesses and prisoners had all an enmity with the deceased, but especially Talib. This person, it is represented, came to reside with the witnesses and the prisoner No. 2, they consult regarding the murder of the deceased, but regarding the mode in which it is to be effected, nothing is stated, nor are any details of the consultation given. It is simply arranged that when they hear a noise from Talib they are to assist. The deceased, some days after, at evening, passes the house in which they reside, Talib following him; they both return at 11 or 11½ P. M. Talib, still, unknown to the deceased, following him. Talib gives the required signal. They all rush out and assist in forcing him into a narrow passage where Talib, with some instrument, the exact nature of which is unknown to any one except Tuckee, cuts his throat. The place in which the murder was committed is only twenty cubits from the public road and the house in which the prisoners and witnesses live, and is visible from a public privy. Nevertheless, the corpse is allowed to remain there. After six days the smell becomes so offensive that one of the witnesses, an accomplice in the crime, Shookore, put up mats with a view of preventing it extending to the public road; the corpse is then identified as that of Busseeroodeen.

The improbabilities of the whole story seem to me to be glaring. Moreover, if the parties concerned had opportunity unmolested to murder the deceased, they had opportunity also to remove the body, at least to some spot more distant from their own house and less exposed than it was to the view of the frequenters of the public privy, and, acting on the instinct of self-preservation, they would have done so. Again, with what instrument the murder was committed, and whence Talib procured it, is not clear, and the rest of the evidence is of the character which we so often meet with in the so-called confessions in this country.

Altogether, it appears to me that the statements of the witnesses are, for the reasons above given, not entitled to any credit. I would, therefore, acquit the prisoner Talib and would direct his immediate release.

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The prisoner No. 2, Asseroodeen confessed both before the police and the Magistrate, but I do not credit the confession. Looking to dates it appears to me that it was made with a view to his being made a witness, and considering the lesser extent of guilt to which he confessed, when compared with the confessions of both Tuckee and Shookore, it does not appear clear why a pardon was not extended to him rather than to them. Be that as it may, discrediting the truth of the substance of his confession I would acquit him and would direct his immediate release.

Mr. G. Loch.—This case has been sent to me to determine whether the prisoner, Asseeroodeen, should be convicted of privity to the murder of Busseeroodeen Gareewan, the principal, Talib, having been acquitted for want of proof. It must be premised that there is no evidence against the prisoner, but his own confession to the Darogah, on the 20th November last, repeated on the same day to the Magistrate, for the evidence of the accomplices has been rejected by this Court as unworthy of credit. It remains, therefore, to be seen whether there is anything in the record of the police proceedings sufficient to warrant suspicion as to the bonâ fides of the prisoner's confession, and whether, supposing it to have been made without compulsion, the confession can be accepted as containing a true statement of what occurred.

The murder is supposed to have been committed on the 6th November, 1858, for, from the evening of that date, Busseeroodeen was missed. On the 12th Idem, Nusseeroodeen, his brother, reported to the Darogah that his body had been discovered in the gully between the lime golahs belonging to Joy Gobind and Madhub Roy. On the 13th the Darogah, taking advantage of the day-light, made a more careful survey of the place where the body was found than had been done by the jemadar on the previous day, and observing marks of blood on the *golahs* on either side and above the place where the body lay, concluded that the murder had been committed on the spot where the body was discovered and having ascertained that there had been a dispute between the deceased and Talib about a cart and bullocks, and that Shookore, with whom Talib had lately lodged, had been seen the previous morning endeavouring to close the entrance of the gully with a mat, and finding a cloth spotted, as was supposed, with blood, in Shookore's house the darogah arrested Talib, Shookore, and other two residents in the same house, viz. Asseeruddeen and Tuckee. The Darogah continued his enquiries on the 13th and 14th, and on the 15th reported that owing to the police it was difficult to proceed with the enquiry and that as there would be some delay in obtaining sufficient proof against the suspected persons, and the period of forty-eight hours,allowed by law for the

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detention by the police of parties charged with felonies, having nearly expired, he had put the prisoners on security.

Among the witnesses examined by the darogah on the 13th November were the Peadah who was deputed to serve a summons on Busseeruddeen in the complaint brought against him in the Magistrate's court by Talib for forcibly taking away the cart and bullocks, and the Mookhtear employed by Talib to look after the case. The latter indicated that one Khedoo Goladar a relative of Talib's, was the chief person in carrying on the case against Busseeruddeeen, and on 14th he was examined by the darogah, to whom he admitted that Talib had informed him of the murder of Busseerudeen, and this confessary added further that he had seen Talib, Shookore, Asseeruddeen, and Tuckee in consultation as to the making away with the deceased. On 16th and 17th, the darogah submitted further reports as to the progress of the investigation, and from information obtained from Esan Chuckerbuttee on the latter date, the darogah sent for and examined Moizuddeen who had been surety for a loan for Rupees 16, which Talib had borrowed from Esan Chuckerbuttee to pay for the bullocks and cart purchased by him from the deceased. Moizuddeen, after relating the story of the dispute between Talib and deceased, admitted that Talib had informed him that he, with the assistance of Shookore, Tuckee and Asseeruddeen had murdered Busseeruddeen, and where they committed the deed. The examinent did not ask nor did Talib inform him with what instrument the murder was committed or how they had disposed of the body. On the 18th the darogah sent in Moizuddeen with his statement, and on the 19th reported that the jemadar of pharee Sealdah had apprehended the prisoners, Talib, Tuckee, Shookore, and Asseeruddeen, and on 10th Idem he forwarded them to the Magistrate, the prisoners Shookore and Asseeruddeen having confessed their guilt implicating Talib and Tuckee, while the prisoners Talib and Tuckee denied the charge, as did also Zakir who was apprehended on the 20th and forwarded with the other prisoners.

Nothing objectionable can at first sight be observed in these papers, the enquiry seems to have been conducted properly and fairly, nor do the prisoners at any stage of the proceedings complain of ill-treatment on the part of the police. It may, however, be remarked that though the darogah, in his report of 18th November, 1858, states that he has put the accused in security. He never mentions the person who became surety for them, nor has he forwarded the security bond, which should have been taken, if they were so released. Again, in his report of 20th idem, he states that the jemadar had apprehended the accused and sent them to the thannah. Had they been on security, why was the surety not required to produce them, and how is it that no mention of the surety is made? This omission, in the

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absence of any complaint on the part of the prisoners, though perhaps of itself insufficient to vitiate the darogah's proceedings raises a suspicion that the accused were not really released on security and the experience of every one,who has been a Magistrate, will testify that the statements in a darogah's report, however fair in appearance, can seldom be relied on.

The confession made to the darogah on the 20th November, repeated on the same date to the Magistrate, almost in the same words, gives an account of the dispute between Busseeruddeen the deceased, and Talib regarding the cart and bullocks, the award of the arbitrators, the non-compliance of Busseeruddeen with that award, the charge brought by Talib in the fouzdaree court against him, and then before any orders in that case adverse to Talib had been passed, the murder of Busseeruddeen by Talib, Tuckee, Zakir and Shookore, to which the prisoner confessses that he was an eye-witness; but denies having been actively engaged in perpetrating the crime. He denies also any participation in any consultation previous to the murder, and assigns as the reason for making his present confession that Khedoo, Goldar, Moizuddeen, and Shookore had already stated what they knew and, therefore, he also stated what he knew, though after the murder he had been threatened by the murderers and enjoined by them to keep silence.

This confession of privity to the murder was voluntarily made as far as we can see by the prisoner to the darogah and repeated to the Magistrate. It was recorded by the darogah at 10 or 11 A. M. of the 20th November, and repeated to the Magistrate between 2 and 4 P. M of the same date, and had there not been that flaw iu the darogah's proceedings which I have pointed out, I should have had little hesitation in accepting the confession as voluntarily made and containing a true, though somewhat imperfect, narrative of the facts attending the murder. As, however, owing to the above circumstance, a suspicion as to the fairness of the darogah's proceedings arises in my mind, I would give the prisoner the benefit of the doubt and acquit him.

PRESENT:

E. A. SAMUELLS, ESQ., *Officiating Judge*.

MR. T. B. O'LOUGHLIN AND GOVERNMENT

versus

A. F. RAZET.

Patna.

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The prisoner a servant in the employ of the Railway Company, was charged with embezzling a sum of Rs. 5,329 which had been entrusted to him by his employers for the purpose of purchasing firewood. There was no direct evidence of misappropriation and it was sought to establish the charge by proving that the firewood delivered to the Company by the prisoner was a much smaller quantity than he had charged for in his accounts.

The quantity of wood delivered was computed by the number of bricks which

CRIME CHARGED.—Embezzlement, in having fraudulently appropriated Rs. 5,329-14-1, belonging to the East India Railway Company under whom he was employed, is as much as he the prisoner, an Inspector under Mr. Palin, resident Engineer of the said Company at Pâtna, being by virtue of his office entrusted with cash Rupees 10,000, which he received on various dates for the purpose of purchasing and collecting firewood, &c. on account of the said Company, did fraudulently appropriate the above sum of Rs. 5,329-14-1, to himself; 2nd count, theft of the aforesaid sum of Rs. 5,329-14-1.

CRIME ESTABLISHED.—As in the first count of crime charged.

Committing Officer.—Syud Azeemooddeen Hosein, Deputy Magistrate of the city of Patna.

Tried before Mr. R. Scott, Sessions Judge of Patna, on the 6th December, 1858.

Remarks by the Sessions Judge.—The prisoner Razet is committed for trial on the counts specified in column 9. The case for the prosecution may be briefly stated as follows.

The Patna Division of the East India Railway Company line is divided into three Sections; an assistant Engineer is in charge of each section, and a resident Engineer, Mr. Palin, has, under his control, the whole division.

The prisoner was employed by the E. I. Railway Company under Mr. Palin for the purpose of procuring fuel for the use of the brick fields of the three divisions. He drew from Mr. Palin whatever sums he required for the purchase of the fuel and supplied the fuel at the *ghauts* or at the brick field to the assistant engineer. In this way, during the months of February, March and April, 1858, he drew the sum of Rs. 10,000, and in the accounts which he furnished to Mr. Palin, this sum in various items was accounted for as given in advances to native contractors and held as an inefficient balance. In the month of April, Mr. Palin had reason to suspect that the fuel for which the alleged advance had been made had not been supplied, he then called on the prisoner to balance his accounts and made over the whole for investigation to Mr. Loughlin.

Mr. Loughlin found on examination that the Assistant Engineer of the Patna section had only received about 27,000 maunds of wood, whereas the prisoner alleged that he had

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delivered 60,923 maunds upon which he instituted the present proceedings.

The prisoner pleaded *not guilty*, and was defended by Mr. Norris. The case was tried before a jury of three English gentlemen, Mr. Sterndale, Captain Adlam and Mr. Sterndale, junior.

The chief evidence on which the prosecution is based is the evidence of Mr. Quill, Assistant Engineer of the Patna Section. He states that he received wood at the *ghaut*, and at the brick-field all through February, March and April. Up to the 6th of April he received it as it was delivered without weighment or *chulan*, after that date he commenced weighing. On the closing of the account he found that within the three months he had burnt twelve lakhs of bricks, that the usual allowance made by Government was 1,700 maunds per lakh; that he had himself twice made the experiment and found it required 1,750 maunds per lakh, and that allowing 2,000 maunds per lakh he gave margin sufficient to ensure the correctness of his allegations.

He stated further that he was in the habit of constantly visiting the brick fields; that one of his Inspectors lived there and that the wood stacks were under charge of chowkeedars, it was therefore impossible that robbery on an extensive scale could have been carried on without his knowledge.

The prisoner pleaded first that he had paid the money drawn from Mr. Palin to native contractors, and secondly that he had received and delivered fuel as per his accounts to the Assistant Engineer.

In proof of the first plea, he brought certain contractors to depose to having received advances and supplied the fuel. In proof of the second he summoned Mr. Palin and some other witnesses and pleaded that the proof as against him was deficient.

The jury, after close examination of the papers and after being addressed by the prisoner's counsel were unanimous in returning a verdict of guilty on the first count of the indictment.

In stating my reasons for considering the verdict correct, it will be necessary for me to advert to the pleas raised by the defendant's counsel and which will be found in extenso on the record.

The first plea is, that the account had been passed by Mr. Palin and could not now be impugned. The account between Mr. Palin and Razet was quite apart from the delivering of fuel, it showed on the one hand sums drawn by Razet from Mr. Palin, and on the other sheet advances alleged to have been given to native contractors by the prisoner for the supply of fuel. Mr. Palin found his advances to Razet correctly entered and had no reason to believe that he (Razet) had not advanced these sums to native contractors, but those advances to contrac-

were burnt and evidence was given that no large quantity could have been stolen from the brickfield. As however it appeared obvious that the wood might have been appropriated or withheld by other parties, and the prosecutor's evidence did not carry the case at most beyond non-delivery of the wood, while the defendant adduced satisfactory evidence of the correctness of his accounts, he was acquitted and the order of the court below which had convicted him was reversed.

The presumption which the Sessions Court adopted did not follow *necessarily* from the premises, and where the prisoner gave a clear account of the money he had received it was

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for the prosecutor to prove the account false.

tors were on Razet's responsibility and appeared in his inefficient balance till the account should be finally adjusted, when the advances of Mr. Palin would be squared and written off on the receipts of the Assistant Engineers of fuel in full for the amount advanced. Had Mr. Palin signed a balance account, the plea would be good. As it is, he does not impugn these accounts. He admits that the sums drawn by Razet are correctly stated, and he has signed no account shewing that fuel has been supplied in satisfaction of these sums. That Razet should advance to native contractors for fuel was correct and business-like, but that gave him no quittance for these sums.

Second plea, that there was no fraudulent application of the money.

This opens the question whether the money had been advanced by prisoner to native contractors or not, and I must say that the evidence on this point is highly unsatisfactory. He calls Susseebhoosun to depose to having received upwards of 5,000 Rs. The witness does so depose, but he fails completely to shew how it was in his power to supply wood to that value, he deposes that he bought orchards, these purchases were verbal transactions, he cannot state the names of the orchards, the names of the owners, or the prices that he paid. He is a man without ostensible means of livelihood, and has undoubtedly been employed by the prisoner to collect wood for him. It would be impossible to state the nature of the transactions which have taken place between them, but I certainly do not believe that he supplied fuel to the amount which he deposes that he did do, had he done so, the fuel would have been forthcoming. The third plea is, that Messrs. Allan and Purcell who took necessary precautions, had no cause of complaint and were not cheated.

This plea is not borne out by the record as Mr. Allan deposes not only to short delivery, but to the prisoner's weights being incorrect in favor of the prisoner. Where proper checks are held, embezzlement is prevented, and for a man's own security he will have recourse to them, but embezzlement is, *per se*, penal, to protect the simple against the knave, as highway robbery is to protect the weak against the strong, nor would it be a plea in favor of a foot pad that if his victim did not take the precaution of travelling armed, he must abide the consequences of his own neglect.

With regard to the fourth plea, all evidence in the cases of this nature must be, to a certain extent, conjectural. In this case either the wood was delivered in full and consumed, or made away with after delivery, or the wood was not delivered.

There is direct evidence that it was not made away with, but as it was not weighed it is pleaded that the evidence regarding the consumption is conjectural. The conjecture

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however amounts to moral certainty, that if a lakh can be burnt by amounts varying from 12 to 1750 maunds, 60,990 maunds could not have been consumed on 12 lakhs, nor can I believe that 45,000 were pilfered in six weeks.

The 5th plea regards the evidence of contractors and the *chulans* made by the prisoner's peons, had such evidence been trustworthy, the prisoner would have been in a very different position, but I reject it *in toto*.

With regard to the 6th plea, the complaint about Bhatoo was made in the month of May after the deficiency had been discovered.

I consider it proved, that the prisoner took advantage of the negligence of his employers and of the confidence reposed in his integrity, to embezzle certain sums of money which he was permitted to draw for the purpose of purchasing fuel.

The prisoner is a convict undergoing sentence of imprisonment for three years for burglarious theft committed in jail. I sentence him to three years' imprisonment from the date of his release on expiry of his former sentence and to pay a fine of 300 Rs. or to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The prisoner in this case was a servant in the employ of the Railway Company. His duty was to purchase firewood for three subdivisions of the line, which were in charge respectively of Messrs. Allan, Purcell and Quill, and to deliver the wood at certain *ghauts* on the Patna side of the Ganges.

For this purpose, he received from Mr. Palin, the resident Engineer of the Patna Division, at various times during the months of February, March, and April, 1858, sums, amounting in the aggregate to 10,000 Rupees, a portion of which, however, he was allowed to devote to miscellaneous charges.

No rules were laid down for his guidance; but the practice which prevailed was, it appears, as follows. The prisoner purchased wood from contractors, sometimes with, sometimes without advances. These contractors laid down the wood at the *ghauts*, where it was weighed by mohurrirs; who, though under the prisoner's control, I gather from the evidence to have been railway servants. The mohurrirs forwarded *chulans* to Razet of the quantity of wood weighed by them; and Razet, it would seem, then gave intimation to the Railway Officers of the quantity of wood at their disposal. It does not appear how this intimation was conveyed to Messrs. Allan and Purcell; but it is stated in the case of Mr. Quill to have been given verbally, sometimes to him and sometimes to Mr. Palin.

Messrs. Allan and Purcell on receiving this notice sent their chuprassees to the *ghauts*, and had the wood weighed, first there, and subsequently at the brick field in their own presence. Mr.

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Quill, on the contrary, received the wood without any weighment either at the *ghaut* or the brick field, and consumed it in his brickkilns, keeping no account of the quantity received or consumed.

This practice, it is admitted, prevailed up to the middle of April; when, in consequence of his suspicions having been excited, Mr. Quill commenced weighing the wood. It is, however, in respect of the wood, which, it is said, ought to have been received in Mr. Quill's subdivision, prior to the commencement of his weighments, that the charge of embezzlement has been preferred.

Razet's accounts were settled monthly by Mr. Palin; but, as he was not required to produce vouchers on these occasions, and his accounts do not appear to have been checked by reference to those of the Assistant Engineers, the settlement, it is evident, was merely nominal. Mr O'Loughlin, who conducts the prosecution on the part of the Railway Company, explains, as a reason for continuing advances to the prisoner in April, though a considerable portion of the embezzlement is stated to have taken place in February and March, that the accounts were not closed and that the embezzlement could not be ascertained until they were; but as Razet was a servant on a monthly salary, not a contractor; and his duty was a continuous one, which, but for his alleged misconduct, would, it is to be presumed, have been carried on, until the completion of the line, this explanation is not very intelligible. It is admitted, however, that the prisoner can claim no benefit in this case from the fact of Mr. Palin having passed his accounts in the manner I have stated.

In these accounts, Razet debits himself with the full amount of cash received from his employers, and takes credit to the same extent for advances made to contractors, wood supplied to the Company, and miscellaneous expenditure, which it is unnecessary to particularise. It cannot, therefore, be said that he has practised any of that secrecy or concealment which a charge of embezzlement usually implies; or that *primâ facie* he has failed to account for the money entrusted to him. He professes to account for every rupee of it; and the only question is, whether his accounts are true or false, and whether there exists sufficient evidence to prove that he has been guilty of any misappropriation of the money entrusted to him, such as would render him liable to punishment under the provisions of Act XIII. of 1850.

No attempt has been made to prove by direct evidence that the prisoner appropriated any portion of the sum entrusted to him to his own uses, nor is there any evidence to shew that he has not paid to the wood contractors the sums so entered in his accounts. The charge is attempted to be established in

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this way. The prosecutor charges the prisoner with the embezzlement of Rupees 5,329-14-1. He is asked where the deficiency is shewn in the accounts; and he turns to an item under date the 14th February of 1,800 Rupees cash paid to Baboo Susseebhoosun Chatterjeea, a wood-contractor, which he says has not been accounted for. He is asked, "Are you prepared to say that he (the prisoner) did not advance that sum to Baboo Susseebhoosun," and the reply is "*I cannot speak on that point.* He has not accounted to us for the sum so drawn. He should have received the firewood from the Baboo and made it over to the Assistant Engineer." Now in the first place, as I have already remarked, there is no pretence for saying that the prisoner has not accounted for the sums he drew, or that he has not given the prosecutor every facility for proving the very material fact relative to the non-payment of the money to which he says he cannot speak. The prisoner has stated in his accounts the names of the persons to whom his payments were made. These appear to be wood-contractors and wood-merchants, residing in the vicinity of Patna; so that if the prisoner did falsely enter in his accounts money which he had himself appropriated, the prosecutor could have had no difficulty in establishing the fact. No attempt of this kind however is made; not a single person, whose name appears in the accounts, is called by the prosecution; and this is the more remarkable, because the prosecutor, in his deposition before the Magistrate, declares the receipt of Bhatoo Dosadh, one of the contractors, which is filed in the case, to be a forgery, an assertion which should not have been hazarded if it was not intended to support it.

The idea in the Court below appears to have been that it was sufficient for the prosecution to show non-delivery of the wood, in order to cast on the prisoner the onus of proving what had become of it, on peril of being convicted of theft or embezzlement, if he failed. The prosecutor has therefore confined himself entirely to proof of deficient deliveries of wood and bamboos from which he would have us infer embezzlement on the part of the prisoner.

The first witness is Sheikh Edoo, a draughtsman in Mr. Palin's office, who deposes that the prisoner received money for the purchase of 2,000 bamboos and 2,000 jhoolas, that he had only supplied 1,000 of each, and had promised to send the remainder, but had never done so. The evidence of this witness is extremely meagre; but even, if we allow it its full weight, it is evident it proves nothing beyond non-delivery.

The same witness states that when the prisoner made over charge to Mr. O'Loughlin, he informed Mr. Palin he had 19,000 maunds of wood on the north side of the Ganges, but when sent to point them out, he could not do so. Mr. Palin

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gave evidence before the Magistrate on this point, and a letter of his to the prisoner on the same subject is filed with the proceedings. It does not appear, however, either from the letter or from the depositions, that the prisoner alleged this wood to form any portion of that which he had purchased with the money entrusted to him by Mr. Palin. He had no apparent object in alleging the existence of the wood on the north bank of the Ganges, if he did not believe it to be there; for the falsehood of the statement, he must have been well aware, would be detected in a day or two at most; and, in the absence of all proof to the contrary, it is but reasonable to conclude that he may himself have been deceived by the contractors or disappointed of a supply of wood which he had reason to expect. It is impossible to infer criminality merely from his failure to point out the wood mentioned in his verbal statement to Mr. Palin.

The only other witness of importance on the part of the prosecution is Mr. Quill, an assistant Engineer; who is called to prove that the prisoner did not deliver to him the full quantity of wood (upwards of 60,000 maunds) for which he claimed credit in his accounts. As this is the evidence on which the prosecution chiefly relies, and on which the prisoner has been convicted in the Court below, it is necessary we should look at it a little closely. The witness is asked "Who received the firewood in your division?" His answer is, "I am responsible and receive it through my Inspector; at that time Mr. C. and Mr. W. Ewen." *Question.*—"Where was delivery made, and how?" *Answer.*—"Delivery was made at the *ghaut* or in the brick field; weighments were first made and reported to me or to Mr. Palin by the prisoner; and up to the 16th of April, we did not test the accuracy of his statements." Again "all (the wood) received before the 16th of April was taken on Mr. Razet's word." He is then asked, "How did you compute the amount delivered up to the 16th April?" His answer is, "I computed the amount delivered by the amount consumed, and the stock on hand at the closing of accounts. I received after the 16th of April, 4,090 maunds in one place, and 824 maunds in another up to the 3rd May. The wood supplied to me by the prisoner burnt 12 lakhs of bricks. I also burnt a small quantity of wood in another brick field for which I have given him credit, amounting to 3,025 maunds. I calculate 2000 maunds are required for one lakh. I have therefore given him credit for 27,025 maunds, viz. 24,000 for twelve lakhs and 3,025 for the other brick field: a very little wood was used to burn lime, so small a quantity that it does not appear in the accounts and would be more than covered by the margin allowed, as Government allows 12 to 1,600 maunds for burning a lakh." In reply to another question, Mr. Quill states that in addition to the

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bricks already mentioned he had burnt 13 lakhs of bricks with wood supplied by other persons.

The prisoner's Counsel objects to this evidence that it must be received with reserve, inasmuch as Mr. Quill has a strong interest in throwing upon the prisoner the responsibility of a deficiency for which he is himself answerable to the Railway Company. I do not see any reason to doubt that Mr. Quill's statements, so far as they go, are perfectly honest and that he speaks what he believes to be the truth: but his evidence deals rather with assumptions than with facts, and even if we accept his computations as correct, really carries the case a very little way against the prisoner; for it by no means follows that because Mr. Quill did not burn 60,000 maunds of wood in his brickkilns, the prisoner must necessarily have embezzled the price of the 33,000 maunds for which Mr. Quill is at a loss to account. There is more than one obvious mode of accounting for the deficiency, consistently with the evidence, without assuming the prisoner's guilt.

In the first place looking to the extreme carelessness which appears to have prevailed, it does not seem at all improbable, certainly it is not impossible, that a portion at least of the wood which Mr. Quill says he received from other parties, and with which he burnt 13 lakhs of bricks, may have been originally supplied by the prisoner, and resold to Mr. Quill. The prisoner it is admitted, wrote to Mr. Ewen in May informing him that he understood Bhatoo Dosadh was selling to Mr. Quill wood for which he had already been paid by him (the prisoner); and similar representations appear to have been made both to Mr. Palin and Mr. Quill. A letter, without date, from the prisoner to Mr. Palin, is also on the record, in which he mentions his suspicions that the contractors had bribed his servants to falsify the weighments, and begs that steps may be taken to detect or prevent this. The Judge considers these communications of little moment, because they were written after the discovery of the prisoner's fraud in April; but there was no such discovery in April. There appears merely to have been some suspicion at that time, and it was not till June that Mr. O'Loughlin was appointed to investigate the accounts. It is evident that when no accounts were kept by the Assistant Engineer, and wood was received, without question, on the verbal statements as to weight of those who brought it, there must have been an immense temptation to frauds of all descriptions. I can easily conceive that the contractors may have colluded with the railway servants, and sold Mr. Quill his own wood twice or three times over.

Then we have no certainty that the wood was not made away with after its arrival at the *ghaut* had been reported by Razet. Mr. Quill says that it was under charge of a Chowkee-

dar and that though petty pilferings may have taken place, robbery on a large scale was impossible. This Chowkeedar, however, it would seem, was employed at the brick fields not at the *ghauts*, where the delivery took place. Now those *ghauts* are situated in the City of Patna, where the daily consumption of firewood must amount to several thousand maunds; and therefore even if we admit that the wood could not have been removed from the brick fields, it is evidently quite within the range of possibility that large quantities may have been removed from the *ghauts*, and sold to the towns-people, with or without the connivance of the Railway servants.

What again can be more probable than, that the contractors, observing the very negligent system which prevailed, and tempted by the immense competition for firewood which existed in the Patna Division during the year 1858, should, with the connivance of the mohurrirs at the *ghauts*, have made short deliveries, and deceived Mr. Razet equally with the Railway Company? The *ghaut* mohurrirs, men on 10 Rupees a month, seem to have been the only check on them; for we have no evidence to show that Razet himself was in the habit of attending at the *ghaut*; and the fraud may therefore have been carried on with little or no risk of detection, to the full extent of the deficiency for which it is sought to make Razet criminally responsible.

The prosecutor has thus entirely failed to establish even a presumption that the deficiency of wood in Mr. Quill's brick-field arose from Razet's misappropriations of the funds entrusted to him.

On the other hand Razet has produced what appears to me, to be very satisfactory evidence of the correctness of the accounts which he rendered to Mr. Palin. We have first the principal contractor, Susseebhoosun Chatterjee, who states that he received Rs. 5,800 from the prisoner, and furnished wood to the extent of 50,000 maunds, the value of which was 6,500 Rs. He files Razet's* receipt for this wood; and the prisoner himself puts in twenty-eight English letters written by the witness and his uncle, Taroknath Chatterjee, advising him of the despatch at different times of 102 boat loads of wood; which, supposing each boat to contain 500 maunds, would give as nearly as possible the quantity stated by the witness to have been delivered. There is also an agreement between the prisoner and the witness for the delivery by the latter of 20,000 maunds, the remainder, it is said, having been supplied without agreement. And the assertion which the prisoner makes before the Magistrate, that the Railway Company are in possession of Susseebhoosun's receipts for the sum of Rupees 5,800 is not contradicted by any evidence on the part of the prosecution.

The Sessions Judge discredits this evidence on the ground that Susseebhoosun does not appear to have the means of

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purchasing wood to the amount stated, and that he is unable to give the names of the persons from whom he bought it. But these objections are manifestly without weight. Wood is purchased by contractors from numerous maliks and ryots scattered over the country, with most of whom the contractor has probably only one transaction. To expect that he could give the names of those persons therefore after a lapse of several months, without reference to his books, is unreasonable; and although the witness stated that his books would give the information required, it does not appear that they were sent for.

With regard to the objection taken to Susseebhoosun's apparent inability to pay for such a large quantity of wood, it is only necessary to observe that with the exception of 700 Rs. which probably does not exceed his profit on the transaction, the witness appears to have received cash from Razet for the whole quantity supplied. He was therefore in no want of capital, but it is also admitted that he did actually supply the greater portion of the wood, which the Railway Company allow they have received; and the prosecutor's counsel has stated in his address to this Court that the witness's uncle, Taroknath Chatterjee, who is a suboverseer of embankments in Tirhoot, and who appears in the agreement filed on the record as security for his nephew, is the real contractor, and that he takes contracts in the name of his nephew, because being a Government servant he has no right himself to trade. There seems therefore to be no reason for impugning the evidence of Susseebhoosun Chatterjee. I cannot indeed conceive what motive he could have, consistently with the theory of the prosecution that the embezzlement is Razet's, and not his, in testifying falsely to the receipt of the money; for Razet appears to be a needy foreigner who was actually in jail under sentence for another offence, when the evidence was given; and the witness must have been aware that by acknowledging the receipt of advances for wood of which the Railway Company denied the delivery, he was running the risk of fixing on himself a heavy responsibility. I cannot doubt that Susseebhoosun's evidence on this point is perfectly true.

Bhatoo Dosadh, another contractor, was summoned as a witness by the prisoner, but failed to make his appearance. A draft drawn by the Railway Company in his favor for 2,000 Rs. and purporting to be receipted by him is, however, filed with the record. The payment of the money and the signature written for Bhatoo by a Lala are sworn to by one Ramlal, a chuprassee in the service of the Railway Company. It is impossible to believe that if, as the prosecution asserts, the signature is not genuine, Bhatoo would not have come eagerly forward himself to repudiate it. It is most unlikely that he could have been kept back by the prisoner; a person without influence, who was at

the time undergoing a sentence of three years' imprisonment for a theft committed in the jail.

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Nowringee Lal testifies to the receipt by him of 500 Rs. from Razet and to his having supplied 7000 maunds of wood.

Achumbit, a wood *beoparee*, recollects selling the prisoner three boat loads of wood for which he was duly paid.

The other witnesses summoned by the prisoner did not appear; but we have from the prosecutor's custody 74 *chulans* from the *ghaut* mohurir reporting to Razet the delivery at the *ghauts* of wood to the amount of 70,519 maunds.

Altogether, as far as lay in his power, the prisoner has completely disproved the loose assumptions of the prosecution. He may possibly have been guilty of negligence, or he may have been the dupe of others; but there is nothing whatever in the papers before this Court to lead me to suppose that he has been guilty of embezzlement; the sentence of the Court below is therefore reversed, and the prisoner will be released on expiration of the sentence he is at present undergoing.

PRESENT:

A. SCONCE, Esq., *Judge*, AND G. LOCH, Esq., *Officiating Judge*.

GOVERNMENT
versus
BAWOOL MOOCHEE.

Jessore.

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Case of BAWOOL MOOCHEE.

Prisoner charged with committing a dacoity and belonging to a gang of dacoits, acquitted because one of the two approvers did not name him in his earlier confessions; because of the

CRIME CHARGED.—1st count, dacoity on the night of the 22nd June, 1846, in the house of Baro Goluck Haldar of Aluckdia thannah Hardee, zillah Nuddea; 2nd count, having belonged to gang of dacoits.

Committing Officer.—Baboo Gooroochurn Doss, Deputy Magistrate under the dacoity commissioner stationed at Jessore.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge of Hooghly, on the 3rd January, 1859.

Remarks by the Officiating Additional Sessions Judge.—The prisoner pleads *not guilty*. He had been undergoing imprisonment in default of security as a notorious bad character in the Jessore jail. The present charge was instituted against him on his release, he reached the Deputy Magistrate's office on the 17th April, 1858, and was identified with the usual precautions.

Witnesses Nos. 1 and 2, approvers, depose that the prisoner was one of the gang engaged with them in the Aluckdia dacoity which appears to have occurred on the 22nd June, 1846, both named the prisoner in their original confessions. The Deputy

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want of corroborative evidence; and because of the remarkable contradictions observable between the statements of the approver-witnesses and the statement of the party, whose house is said to have been attacked, contradictions which the committing officer has overlooked and failed to investigate or reconcile.

Magistrate certifies that collusion was impossible inasmuch as witness No. 1, confessed in April 1857 at Hooghly, while witness No. 2 confessed in May 1857 at Jessore, the former before one Deputy Magistrate, the latter before another. Both witnesses state that they have only committed this single dacoity in the prisoner's company owing to his living a long distance from them. The evidence of these witnesses to this dacoity has already been held good by the Sessions and Nizamut Courts in the trial of Mohun Moochee and three others sentenced to transportation for life on the 28th June, 1858.

The record bears out their evidence in the present trial as against the prisoner in the following points: several of the gang were wounded by the chowkeedar of the village which led to their arrest. Lalchand Moochee admitted his guilt and named the prisoner and the approvers as his accomplices. Mohun Moochee also confessed and named the prisoner and the approvers. Shiboo Moochee confessed and named the approvers distinctly. He names another Bawool Moochee, but gives the residence of the prisoner, shewing that there was some confusion in the mind of the person who wrote the confession. The approver witness No. 2, was also arrested. He bore the mark of a wound which he had received during the dacoity, but he does not, in his confession, then include the prisoner's name. All at the time denied their guilt to the Magistrate, and only one person the approver witness No. 2, was convicted of the crime and sentenced to five years' imprisonment, though Lalchand and Shiboo Moochee were also committed.

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Pages 124, 127, 129 and 154.

Record No. 1, page 25.

Record No. 84 page 2.

The prisoner in his defence urges that he quarrelled with the approver witness No. 1, while in the Jessore jail, and accidentally struck the latter's mother with some wood he was carrying.

Witnesses are called to character both for the prosecution and the defence. Of the former witness, No. 3 states that the prisoner is a suspected man and witness No. 5, that he is a respectable character. Of the latter witnesses Nos. 6, 7 and 8 all give the prisoner a good character. Witness No. 4, the Chowkeedar of his village, deposed before the Deputy Magistrate, that he was a bad character and gave his reasons for saying so. Before this Court he denies the truth of those reasons and states that he is a good character, and that though he has been confined as a bad character, the case was trumped up against him

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by the gomastah of the village. I have directed this witness's committal for perjury.

The evidence of the approvers agrees with their original confessions taken down under circumstances which preclude the possibility of any collusion. It is also well borne out by the record of the enquiry held into the dacoity at the time. The remainder of the gang having been sentenced by the Nizamut Adawlut to transportation for life, in convicting this prisoner I refer his trial also to the higher Court with a recommendation that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Sconce and G. Loch.) This prisoner is charged first, with committing a dacoity in the house of Baro Goluck Haldar in the village of Alukdia on the 22nd June, 1846; and second, with belonging to a gang of dacoits: and in support of these charges two witnesses, approvers, are adduced.

Both witnesses say that on one occasion only, that is in the instance of the first charge, the prisoner joined them in committing dacoity.

The evidence of the witnesses is held to be sustained, because they all named the prisoner at their first confessions taken in 1857, and because certain parties arrested shortly after the occurrence, named the prisoner then.

Now we have to observe that the residence of the prisoner is now shewn to have been in "Buro Jhinoydoho," and that the description given by the parties arrested at the time of the dacoity does not correspond with this fact. They do not speak of the Bawool named by them, as resident in "Buro Jhinoydoho" but of one Bawool Telee and another Bawool described confusedly as resident in Choto Jhinoydoho (referred to also by the approver Mohun) or in *astana* Doorgapore.

Further the approver Surroop, who was arrested and convicted, in the first instance, in his confession to the police, did not name the prisoner; nor even in his confession taken in May 1857 did he name him. The Sessions Judge therefore is in error in saying that both approvers named the prisoner in their original confessions.

Again we observe that the Sessions Judge has failed to notice and has of course, not considered it necessary to reconcile the very remarkable contradictions observable as to the commission of the crime, between the evidence of the witnesses and the original information lodged by Goluck Hauldar the owner of the house supposed to be robbed. Neither Goluck himself nor any person cognizant of the commission of the offence has been brought forward at the trial. What Goluck said in 1846 was that in the course of the night he went out of his house, and seeing some men standing, he thought they had come to commit a dacoity and gave the alarm and the dacoits fled. But Hulodhur

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tells a different story, he says the dacoits smashed the door of the house, entered and carried off a booty worth four or five hundred rupees. Whether or no Goluck Hauldar spoke less than the truth in 1846, we have not now to determine, nor have we the means of determining. As the case stands we find that the committing officer has not endeavoured to bring out the facts that attended the commission of the crime, or test the approvers' disclosures by these facts: conviction, not investigation appears to be the purpose of the prosecution.

We acquit the prisoner.

PRESENT:

C. B. TREVOR, Esq., *Judge*, E. A. SAMUELLS AND H. V. BAYLEY, Esqs., *Officiating Judges.*

Hooghly.

GOVERNMENT

versus

SOOKHO HARI.

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The occurrence of dacoities at Bamoonea and Nebusta is proved, and prisoner's presence at these, is deposed to by two approvers, whose statements are independent of, and tally with, each other. In regard of these two cases there is no further corroborative evidence.

In regard of a third dacoity at Bhugwanpore, prison-

CRIME CHARGED.—1st count, dacoity on the night of the 10th December, 1847, in the house of Abdoo Moonshee of Bamoonia, thannah Monteshwur, zillah Burdwan; 2nd count, dacoity on the night of the 26th August, 1858, in the house of Brojo Hajra of Bhugwanpore, thannah Monteshwur, zillah Burdwan; 3rd count, dacoity with murder on the night of 5th May, 1850, in the house of Kishen Mohun Bhuttacharjea of Nubusta, thannah Gangoor, zillah Burdwan; 4th count, having belonged to a gang of dacoits.

Committing Officer.—Baboo Chundur Seekur Roy, Deputy Magistrate under the Dacoity Commissioner of Hooghly.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge of Hooghly, on the 16th August, 1858.

Remarks by the Officiating Additional Sessions Judge.—The prisoner pleads *not guilty*. He was arrested and brought before the Deputy Magistrate on the 21st May, 1858, having been denounced by the three approver witnesses, who gave evidence against him, in January, March and the first week of May, 1858, respectively. He is put upon his trial for having belonged to a gang of dacoits in the village of Mundhgram in thannah Monteshwur, zillah Burdwan, and having been present with other members of the gang in three specially charged dacoities, viz. that at Bamooneea in December 1847, that at Bhugwanpore in August 1848, and that at Nubusta in May 1850.

I will first consider the second of these crimes, because it is that in which the testimony of witnesses independent of the

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approvers is brought forward to corroborate their depositions. All three approvers state they were present in this dacoity. All three in their original confessions mention several members of the Mandligram gang, and among them the prisoner, as having been engaged in it; they all depose to the same effect before me. Their account of the dacoity, how the information on which they acted was gained, where they assembled, what occurred after they penetrated into the house, and while they were retreating, although differing in certain points, as the stories of three independent witnesses coming from three different villages would necessarily do, still corresponds in the general features of the crime, and as to the parties who composed the gang on the particular occasion.

The record to a certain degree corroborates the approver's statements. Three of the dacoits were seized in the act by the villagers, viz. Madoo Bagdi of Kororee, Madhub Bagdi of Bhugwanpore, and Bola Sooree of Chapaghattee, who called himself Kangalee Doss Boishtum. None of these, however, gave any account of their accomplices. They were all convicted and sentenced at the Sessions Court. The approver No. 1 Shoobul Chung of Moonsheedanga was found with a fresh wound upon him and arrested. He then confessed before the police and among the names of his accomplices he gave that of approver-witness No. 3 Bhoirub Kotal of Kanteekur. This can hardly be considered a corroboration, as approver-witness No. 1 now states that the confession he is then set down as having made was not his own, but one written down and made up by the police. The name of the prisoner or of any of the Mundligram gang does not occur in it. Although he states that it was quite true in so far as it mentions his own and witness No. 3's and one or two other individuals, present, still I am of opinion it cannot, taken alone, be considered good corroboration. But there is further, the deposition made at the time by the owner of the house, who gives a long list of individuals whom he states that he recognized among the dacoits; there are among them the names of the prisoner, of approver-witness No. 2, and eight others of the Mundligram gang, there are also the names of eight individuals from Moolgram, and one from Nowpara. Such a recognition would, standing alone, be insufficient for conviction. But no one can read the accounts of the dacoities which occurred at about this time (1848,) in the Burdwan district, without observing that they were carried out by large gangs, in a most determined manner, quite regardless of opposition from the villagers, and

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er's active participation is proved by the evidence of the above two and of a third approver and by the testimony of prosecutor and villagers to his recognition at the time. The third approver in this case did not name prisoner in his original confession at the thannah, but he did some years after before the dacoity Commissioner; independently of his evidence, there is abundant proof of prisoner's guilt in this case, and his character is proved to be bad.

Therefore although one Judge would convict and sentence to sixteen years for the third dacoity only, the majority of the Court, considering the corroboration of the approvers' evidence in the Bhugwanpore case to entitle

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their testimony in the other cases to credit, held the prisoner guilty of all three dacoities and of professional dacoity. Prisoner transported.

that they were not short hurried attacks upon a house when the dacoits ran away upon the slightest alarm being given. There was opportunity for recognition, when as the witness states in this case he knew the Mundligram people they living no great distance from him. It is possible that his recognition of one man may have led him to the recognition of others of the same gang. He may have been deceived as regards particular persons or having recognised one or two, he may have purposely inserted the names of the rest. But on full consideration of all such possibilities, I would give credence to it in those points where it is supported by the statements of three approvers, made independent of it and of each other.

As regards the dacoities charged in first and third counts, there is only the evidence of the approver-witnesses Nos. 2, and 3, who depose to the particulars of these crimes, to the presence of each other, of the prisoner, of others of the prisoner's gang, and generally of the members of other gangs who were present on each occasion consistently with their first depositions before the Deputy Magistrate and with each other. There is no independent witness's corroboration in either case to the presence of the prisoner. But in the Bumooneea dacoity, there is the deposition of eye-witnesses to the fact that they recognized among the dacoits the approver-witness No. 2, and other members of the Mundligram gang. In the Nubusta dacoity the record, as far as it does go, also corroborates the approvers' statements.

Darogah's *sooruthal.*

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Record No. 134, Pages 15 & 24, 26. Arrest of Gopal Ghose, pages 132, 213, and Burdwan *roobokaree* arrest and conviction of Gopal Bagdee.

The prisoner urges in his defence that he was in the Burdwan jail at the same time as approver witness No. 1, that they were employed as Mehturs, and that in a quarrel he struck witness No. 1, with his Mehtur's broom. There is no evidence to prove this, and I look upon it as simply a specimen of dacoit abuse. I allowed him to put any question he pleased to the approvers, he questioned witness No. 2, as to whether one of the dacoits named by him as having been wounded in the Bhugwanpore dacoity had not been arrested for another dacoity which occurred in the same night in another neighbouring village and confessed to it. There seems from the evidence of witness No. 4, and the answer of witness No. 2, no doubt that this fact was true. It is not a point material to the prisoners' guilt, though it might, to some extent, be considered with regard to the general credit to be attached to witness No. 2's statement. It would not, however, be the first instance in which a dacoit wounded in one dacoity has confessed to another;

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there is a published case of the same sort in the second dacoity Commission report.

The witnesses cited by the prisoner give him a doubtful character, one of them is the brother of Beesha Hari, who has been denounced by the approvers as one of the gang.

It is proved that from February 1849 to February 1850 the prisoner was in prison as a notorious bad character in default of security.

I convict the prisoner on all four counts of the calendar, and recommend that he be sentenced to transportation for life.

On perusal of the above the following resolution was recorded by the Nizamut Adawlut (Present: Messrs. C. B. Trevor and H. V. Bayley) No. 559, dated the 17th September, 1858.

Previous to passing judgment in this case, the Court is desirous to know the circumstances of the three approvers at, and previous to, their becoming such; that is, were they prisoners in jail; if so, in what jail, and for what offences, and for what period they had been incarcerated; or were they only recently apprehended?

As from the record nothing on these points is to be gathered, the Court directs that the Officiating Additional Sessions Judge of Hooghly be requested to obtain from the Commissioner for the suppression of dacoity, with as little delay as possible, all the information on the above points which he may be able to supply.

The Court thinks that in order to prevent the requirement of such information in future by it, it will be well for the Sessions Judge invariably to obtain from the committing officer, such information, as will enable him, when referring the case, to state clearly and fully all the circumstances connected with the approvers, in order that the Court may be in a position to determine at once whether a greater or lesser degree of confirmation to their different statements be necessary.

The Court observe that the committing officer has not recorded the usual certificates required by the Circular of the Commissioner, copy of which was furnished to this Court by the Commissioner in his letter of the 19th August, 1857.

In reply to the above the following letter 121 dated the 23rd September, 1858, was submitted by the Officiating Additional Sessions Judge of Hooghly.

With reference to the Court's resolution No. 559, dated the 17th instant, on the trial noted in the margin* requesting special information regarding the approvers in that case, I have the honor to request that you will submit to the Court the accompanying copy of a letter No. 358, dated the 22nd idem from the Dacoity Commissioner.

* Government *versus* Shookho Hari.

From the dacoity Commissioner to the Officiating Additional

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Sessions Judge of Hooghly, No. 358, dated the 22nd September, 1858.

I have the honor to acknowledge the receipt of your letter No. 115, dated the 21st instant, enclosing resolution of the presidency Nizamut Adawlut under date 17th September, and in compliance therewith to furnish the following information.

Soobul Kotal Chung was sent for on information derived from the confessions of an old approver named Sonatun Mundol, who had been transported for misconduct in October 1855 and had denounced him in no less than thirteen dacoities. He reached this office having been apprehended and sent in by the police on the 22nd December 1857. He confessed to a series of dacoities, the details of which were recorded between the 16th and 28th of January, 1858. The prisoner, while under confession was kept apart from all others in the cutcherry, where he remained until the 24th of February, the date on which his case was referred by the Sessions Judge to the Nizamut Court; after that date he was allowed as is customary to reside in the approver's lines.

Nufful Chung approver was sent for on the confession of Soobul Kotal, was apprehended by the police and sent to this office, where he arrived on the 15th of March, 1858. He at once confessed and the details of his statements were recorded between the 17th and 20th of March, during the time of his confession and up to the 7th of April, the date of his trial before the Sessions Court, he was kept in a separate guard room apart from the prisoners and approver; after trial he was allowed to reside in the approvers' lines.

Bhoirub Kotal Chung approver was also sent for on Soobul Kotal's confessions. He was apprehended by the police and brought to this office on the 4th of May, 1858, and at once confessed; his statements were recorded between the 5th and 11th of May. He was also kept under separate guard, apart from all other prisoners or approvers, and he was not allowed to go to the lines until after the date of his trial before the Sessions Court, viz. on the 9th of June.

In conclusion, I would beg most respectfully to bring to the Court's notice that every possible precaution is taken in recording the confessions of approvers. They are invariably kept apart from all others, and guarded in such a manner that collusion is impossible; besides this, before a man commences his confession, no hope or inducement, whatever is held out to him beyond that of becoming an approver and escaping transportation by being allowed to remain on the establishment. A confessing prisoner is always warned against giving fabricated statements or implicating innocent men, and is given fully to understand that any wilful mis-statement, whenever discovered, will subject him to immediate transportation.

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The Court may rest assured that so far as human precautions can be depended on, there is no possible ground for even a suspicion that approvers, made in this office, can collude with one another, or with the records, or that the fact that the record of the case being in the office, or of the case having been previously confessed to by any other approver, in any way affects the genuineness of a subsequent confession. Our whole and sole object is to attain a strictly true and trustworthy statement, and in these particulars the evidence of this office approvers has stood more severe test in constant repetition and cross-examination, than could be borne by almost any other independent testimony. It is true, some two or three instances have occurred, in which approvers have been detected in making false statements and in every instance the accused parties have been acquitted and the approvers transported. With this strong hold over them, I submit that the evidence of this office approvers is less open to suspicion and *infinitely more trustworthy than any other evidence procurable in India.*

I challenge the closest and strictest enquiry into the working of this office, and should the Court see fit to depute any of its members to visit Hooghly, I shall have no difficulty whatever in satisfying them on all and every point connected with my approvers and the trustworthiness of their statements. I need not add that I shall feel personally honored by the visit, and trust that this explanation may be considered satisfactory.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor, E. A. Samuells and H. V. Bayley.)

Mr. H. V. Bayley.—When this case was first before us, we called for information as to the position of the approvers who had been made witnesses in this case. This has now been furnished, and the result does not shew that collusion was easy or probable.

The prisoner is charged with three specific dacoities; one at *Bomooneeah;* a second at *Bhugwanpore;* and a third at *Nubusta.* He is also charged with having belonged to a gang of dacoits; and has been convicted, under Act XXIV. of 1843, and recommended to be sentenced to transportation for life, under the same Act.

I have not gone into the third dacoity charged; i. e. that at *Nubusta;* as I think the prisoner is proved guilty of having committed gang-robbery, as charged, at *Bamooneeah* and *Bhugwanpore;* and of having belonged to a gang of dacoits.

In the *Bamooneah* dacoity, two approvers consistently depose, in accordance with their original confessions, when they were apprehended *before* the arrest of the prisoner, that he was engaged in it. There is no reason to suppose there were any means of collusion; and yet their statements tally, not only as to the leading particulars of the dacoity, but as to the

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identity of most of the parties engaged in it, including the prisoner. It has been the practice in trials under Act XXIV. of 1843, to require the corroboration of independent evidence to the statement of *one* approver witness; but here there is no reason to believe the statements of *two* approvers taken independently, and yet tallying, to be false; I would therefore not reject this evidence.

As to the *Bhugwanpore* dacoity, three approver-witnesses depose to it. Of these, No. 1, Soobul Chung, confessed at the police three days after the dacoity, i. e. on the 30th August, 1848. It is true that at the Sessions he says the police wrote what names they pleased in that confession; but he apparently corrects this in the next confession. The name of the prisoner is *not* in that confession. But it *is* in the original confession when first taken before the dacoity Commissioner years after; and his present deposition gives nearly the same names as engaged in this dacoity. In all are Mudoo Bagdee, Madub Bagdee and Bolasooree, who were convicted at the Sessions of this dacoity.

This approver all along mentioned witness No. 3, Bhoorub Kotal, as present. The prisoner is mentioned in the original confessions, and the depositions of the two other approver-witnesses, and all their statements as to the identity of other parties engaged generally tally.

The prosecutor and villagers at the time recognised prisoner and witness No. 2, and some others now named. They so deposed at the time, 27th August, 1848.

I think this evidence sufficient to convict the prisoner of the two specific dacoities charged in the 1st and 2nd counts.

I think this evidence also proves him guilty of belonging to a gang of dacoits, and I would sentence him, as recommended by the Additional Sessions Judge, to be transported for life.

Mr. C. B. Trevor.—The Additional Sessions Judge convicts the prisoner, Sookho Hari, of having committed the three dacoities with which he is charged in the first three counts, and also of having belonged to a gang of dacoits as charged in the 4th count.

The evidence against the prisoner consists of the statement of three approvers, Soobul Kotal Chung, Nuffer Chung and Bhairub Kotal Chung; the first approver was apprehended and sent in by the police on the 22nd December, 1857, and his confession was recorded between the 16th and 18th January, 1858. In his confession he mentions Nuffer Chung, who was sent for, apprehended and sent in by the police on the 15th March, 1858; he confessed between the 17th and 20th March of that year. The third approver, Bhoirub Kotal Chung, was sent for on Soobul Kotal's confession, and his statement was recorded between the 5th and 11th May.

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Confessions resulting from each other and following each other in such quick succession seem to me to require independent corroboration, ere they can safely be acted upon. There is no doubt that the three dacoities with which the prisoner has been charged, were actually committed, the only question is whether the evidence is sufficient to connect the prisoner with the commissal of them.

The evidence as to the dacoities in Bamooneeah and Nubusta is confirmed by the approvers' statement Nos. 2 and 3. There is no evidence corroborating that testimony; it therefore appears to me sufficient for the conviction of the prisoner as being concerned in them.

All the approvers testify to the prisoner being concerned in the dacoity at Bhugwanpore, and the approver-witness, No. 1, confessed before the police at the time to having been concerned in that dacoity; in that confession the name of the prisoner does not appear, and its absence throws a doubt over the truth of his present confession and statement as to the prisoner at the bar. His present statement is, however, corroborated by the evidence of the prosecutor in whose house the dacoity occurred, and who deposed to having recognised the prisoner as amongst the dacoits, that evidence I see no reason to distrust, and by it consequently the prisoner is connected with the dacoity at Bhugwanpore.

I would convict the prisoner of having committed a dacoity in Bhugwanpore, and sentence him, for that specific dacoity, to sixteen years' imprisonment with labor in irons.

Mr. E. A. Samuells.—I would convict the prisoner of the three dacoities charged against him, and also of belonging to a gang of dacoits, and would sentence him, in concurrence with the Additional Sessions Judge, to transportation beyond seas for life.

The evidence of the approvers is well corroborated in the Bhugwanpore case. The prisoner has been already in jail as a notorious bad character; a fact, which, to a certain extent, bears out the approvers general statements regarding the mode, in which he obtains his livelihood; and although the evidence of the approvers is not directly corroborated in the Bamooneah and Nubusta cases, yet I observe nothing in those papers to throw discredit on it. The original depositions of the approvers appear, as well from internal evidence as from the testimony of the dacoity Commissioner, to be independent statements, differing in details, and merely agreeing in their main features. It appears to be admitted that they are trustworthy in so far as the Bhugwanpore dacoity is concerned; and I therefore see no reason to doubt that they are so in respect to the dacoities committed at Bamooneeah and Nubusta.

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PRESENT:
C. B. TREVOR, ESQ., *Judge.*

GOVERNMENT
versus
JANOKENATH BHUTTACHARGEA.

Beerbhoom.

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Case of JANOKENATH BHUTTACHARGEA.

Held that previous to indicting a party for subornation of perjury, it is necessary that the party alleged to have been suborned shall have committed perjury. A mere unsuccessful attempt to persuade a party to give false testimony does not amount in law to subornation of perjury.

CRIME CHARGED.—Subornation of perjury, inducing Ramkisto Mookerjee, Nitaye Bagdee and Lukheekanto Bagdee, the witnesses in a case of dacoity in the house of Bissonath Roy, to give false evidence.

CRIME ESTABLISHED.—Subornation of perjury.

Committing Officer.—Mr. R. O. Heywood, Officiating Magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, Sessions Judge of Beerbhoom, dated 26th August, 1859.

Remarks by the Sessions Judge.—During the trial of a dacoity case the prisoner endeavoured to persuade two witnesses, cited as witnesses to the indentity of certain articles of property, to give their evidence to the effect that they could not indentify a particular article, the said identity being a point material to the issue of the case.

His defence was denial and enmity on the part of the prosecutor in the original case, but his seven witnesses could not do more than give him a good character, and express their disbelief in his having so acted. He had, however, a sufficient motive in a desire to serve a friend.

The jury with whom I tried the case, found the man not guilty, but I consider it fully proved, and sentence him to 3 years' imprisonment without labor or irons, the labor being excused on account of his age and infirmity.

Remarks by the Nizamut Adawlut.—(Present: Mr. C. B. Trevor.) The appellant, Janokenath Bhuttachargea, was committed on a charge of subornation of perjury by direction of the Sessions Judge of Beerbhoom.

The offence consisted in having, during the trial of a dacoity case, endeavoured to persuade his witnesses cited, to prove the identity of certain articles of property, to give their evidence to the effect that they could not identify or particularize articles, the said identity being a point material to the issue of the case.

The witnesses disregarded the persuasion of the prisoner and spoke what the Judge considered the truth; now before a party

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can be found guilty of subornation of perjury, it is necessary that the perjury committed must be proved, but in this case no perjury was in the Judge's opinion committed at all, it follows that the crime as laid, breaks down.

Again this Court, on appeal, distrusted the evidence of these witnesses as to the identity of the property; it follows that in the Court's view, the prisoner persuaded the witnesses to speak in accordance with the result at which it itself arrived and this can in no way, in the Court's opinion, amount to subornation of perjury, so that whether the Court regards what has transpired below or in this Court, the charge, as brought against the prisoner, falls.

The prisoner is entitled to his immediate release.

PRESENT:

C. B. TREVOR, ESQ., *Judge*, AND H. V. BAYLEY, ESQ. *Officiating Judge*.

GOVERNMENT

versus

AZIM KHAN (No. 11,) ROHEEMDAD KHAN (No. 12,) SHEIKH BURRO ALLADEE (No. 13,) RUHMUT KHAN (No. 14,) AND NEEAMUT KHAN (No. 17.)

Midnapore.

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Case of AZIM KHAN and others.

Held that there is no rule in Mahomedan Law rendering the evidence of eye-witnesses necessary for a conviction for wilful murder: that law only bars *kissas* in cases in which the evidence is simply presumptive, but admits of discretionary pun-

CRIME CHARGED.—1st count, No. 11, wilful murder of his wife, Musst. Beebun Bebee, by wounding with a knife in her neck out of jealousy; 2nd count, Nos. 12, 13 and 14, being accessaries after the fact; and 3rd. count, No. 17, being privy to the crime contained in the 1st count.

Committing Officer.—Mr. J. M. Lowis, Magistrate of Midnapore.

Tried before Mr. G. P. Leycester, Sessions Judge of Midnapore, on the 17th August, 1859.

Remarks by the Sessions Judge.—The prisoners plead "*not guilty*." Of the five prisoners, whose cases are referred, the first, or prisoner No. 11, says he has no defence, but adds he was sleeping in another house; that the grave had been disturbed, and the wound inflicted on the dead body.

The second or prisoner No. 12, also says he has no defence, but pleads that the informers have a quarrel with him.

The third or prisoner No. 17 has no defence whatever to make of any kind.

The other two prisoners, Nos. 13 and 14, plead "*alibi.*"

The circumstances of the case are as follows.

The deceased Bechun Bebee, of about twenty years of age and the wife of Azim Khan, prisoner No. 11, three or four days

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before her death, went to the celebration of a marriage at the house of Burro Alladee, prisoner No. 13, her maternal uncle by marriage.

Alladee's house is situated in the same village of Shampore, about half a mile distant from Azim's.

This visit appears to have been contrary to her husband's wishes. Bechun Bebee remained there longer than was intended, and Jadoo, witness No. 8, a younger brother of Azim, was sent to fetch her back on the evening of the 4th day.* On her return she sat for a little time with her mother Doomun Bebee, witness No. 9, the wife of Neeamut, prisoner No. 17, who again is the uncle as well as the father-in-law of the prisoner Azim, and resides in the same homestead.

After a time Bechun with her child retired for the night to her own house, but it would appear from the evidence that her husband did not do so; at any rate at that time. This was on Wednesday the 20th Joistee Umlee, corresponding with the 1st June last.† At midnight the family were disturbed by a cry either from Bechun or her child, or possibly from both. On this her mother-in-law, Khatoo Bebee, witness No. 7, and mother Doomun, witness No 9, went to her house, found the prisoner Azim and his father Rohimdad in the verandah, and Bechun inside the house dead.‡ The men of the house made immediate preparations, and with the assistance of Sheikh Burro Alladee, prisoner No. 13, and Rohmut Khan, prisoner No. 14, buried the body before or just as day had dawned.§ On the following morning, Thursday, about 7 or 8 o'clock, Beekon Khan, witness No. 10, observed the new grave in the burial-ground, which is only two or three *russees*|| from the house of Rohimdad, prisoner No. 12.

It became rumoured that Bechun had died of cholera; but on the Friday, Fukeer Khan witness No. 12, overheard Doomun Bebee, the mother of the

* Witness No. 7, Khantoo Bebee, page 14.
" " 8, Jadoo page, 36.
" " 9, Doomun Bebee, page 41.

† Witness No. 7, Khatoo Bebee, pp. 24, 25 and 32.
" " 8, Jadoo, page 38.
" " 9, Doomun Bebee, page 41.

‡ Witness No. 7, Khatoo Bebee, pages 25, 30 and 31.
" " 8, Jadoo, page 37.
" " 9, Doomun Bebee, page 41.

§ Witness No. 7, Khatoo Bebee, page 30.
" " 8, Jadoo, page 37.

|| Witness No. 4, Ram Chand Khan, page 14.
" " 6, Fyzollah, page 20.

ishment even to perpetual imprisonment. In a case of wilful murder, however, in determining the punishment to be awarded, the Court must act not under Mahomedan Law but under Section 2, Regulation VIII. of 1799, and, unless there be circumstances rendering the party, found guilty of wilful murder, a proper object of mercy, pass a capital sentence on him. Held that in order to make parties accessaries after the fact it is not necessary that there should be evidence of any direct act of personally receiving, comforting or assisting the principal but any act done impeding or tending to impede the course of justice will make the party doing it, with

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knowledge that the crime has been committed by the principal, an accessary after the fact.

deceased saying to Azim her son-in-law, "you have put a knife to my child's throat, I will put one to yours."

Fukeer Khan forthwith told this to Beekon Khan, witness No. 10, a superannuated Burkundaz, who immediately started off to the Darogah, gave his deposition, and prayed that the body might be exhumed.

The Darogah arrived at Shampore the same night, put a guard over the grave; and the next morning, viz. the 5th June exhumed the body of Bechun Bebee.

A severe wound was observable in the right side of the neck, a small one on the right cheek, and a bruise on right arm and thigh.*

The body was at once sent into Midnapore, and examined by the Civil Surgeon.†

The medical evidence distinctly proves that there was a deep incised and penetrating wound dividing the trachea, right carotid artery, and jugular vein; that a knife plunged into the throat would have caused such a wound; and that death must almost immediately have resulted; that from the appearances of the wound, it was undoubtedly inflicted during life.

This evidence carries conviction with it that a fatal murder had been perpetrated; it only remains to be considered by whom.

The only male inmates of the household in Rohim's homestead on the night of the murder were himself, his son Azim, prisoner No. 11, a younger son Jadoo, witness No. 8, and his brother Neamut, prisoner No. 17. The females were the deceased Bechun Bebee, her mother-in-law, Khatoo Bebee, witness No. 7, and her own mother Doomun Bebee, witness No. 9, the wife of Neamut.

The principal witnesses of the fact adduced at the trial are the two women aforesaid and Rohim's younger son Jadoo. These witnesses by their evidence in the foujdaree, distinctly laid the crime at Azim's door: and there is not a shadow of suspicion that the other two men did, or could have imbrued their hands in their daughter's blood.

In this Court Khatoo Bebee, the mother of Azim, prisoner No. 11, veers round in support of his defence that Bechun died of cholera. After a long examination and being reminded of her evidence in the lower Court, and after a solemn caution as to the guilt of perjury, she reluctantly admitted that on going to Bechun she found her throat cut and her bedding and clothes saturated with blood. She pointed out these things to the

* Witness No. 4, Ramchand Khara, page 14.
" " 5, Gooroopershad Mundul, page 17.
" " 6, Fyzoollah, pages 19 and 20.
" " 15, Ghazee, page 59.

† Witness No. 16, Kamaloodeen, page 60.
" " 18, Akal Khan, page 62.

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Court and allowed that she had washed them. She will not admit that her son Azim came out of that house when she got there, but states that he took care of his wife, while she herself took charge of the child, and that Azim prepared the body for burial, a fact totally incompatible with the supposition that Bechun died a natural death.

Doomun Bebee, witness No. 9, the mother of the deceased, adheres with tolerable accuracy to her deposition before the Magistrate, viz. that on proceeding to her daughter's house she found her lying dead with her throat cut, and saw Azim and his father in the verandah and heard the latter say to his son "What! has your fatal day come?" Jadoo's evidence corroborates that of the two women. He deposes that on the alarm he went to deceased's house and saw Azim in the verandah; but withdraws his previous statements as to some expressions he had heard pass between Rohimdad and his son Azim inculpatory of the latter. He however distinctly deposes that the body was immediately taken away to be buried by Azim, prisoner No. 11, by Rohimdad Khan, prisoner No. 12, by Sheikh Burro Alladee, prisoner No. 13, by Rohmut Khan prisoner No. 14, and by Neeamut Khan, prisoner No. 17, and that he deponent, accompanied them with a *kulsee* of water. Both this witness and Khatoo Bebee distinctly depose that a "*tauree* knife" which the former had seen in Azim's hands in the morning, was missing and could nowhere be found.

The above evidence against the prisoners given by witnesses, who would have screened them had it been possible, may be received with perfect confidence. In considering the contradictory evidence of Khatoo Bebee, reliance must be placed on that portion of it which inculpates Azim, prisoner No. 11, and which becomes credible from the corroborative evidence of the Civil Surgeon and of those present at the exhumation of Bechun's body. The story of her death by cholera; the insinuation that the wound was inflicted after the body had been committed to the grave is palpably false, the rest of it is a desperate attempt to screen her son.

There is no direct evidence that Azim struck the blow; in fact it was next to impossible that there should have been any eye-witness under the circumstances except the infant with Bechun.

The circumstantial evidence, however, coupled with the conduct of the prisoners immediately afterwards, leaves no doubt in my mind that Azim, prisoner No. 11, is guilty of the wilful murder of his wife; and Rohimdad, No. 12, Sheikh Burro Alladee, No. 13, and Rohumut Khan, No. 14, are accessaries after the fact, having personally assisted in removing and burying the body. In this respect, Jadoo's evidence may be wholly trusted. It will be observed that Neamut, prisoner No. 17, is

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only charged with "privity to the murder" and of that he is undoubtedly guilty on Jadoo's evidence, and on that of his own wife Doomun Bebee, as well as by his answer in the Magistrate's Court. He has no defence, moreover, to make in this Court.

There is nothing in the evidence for the defence which can exculpate the prisoners: neither is there any extenuating circumstance in favor of Azim, prisoner No. 11. He appears to me guilty of a deliberate and cold-blooded murder. There is not a breath of suspicion against his wife's character, or of any provocation on her part, and I would recommend that he suffer the extreme penalty of the law.

The conduct of the accessaries shews such a total disregard of all responsibility, so little abhorrence of this dreadful crime, that, for example's sake, I should sentence them to nothing less than fourteen years' imprisonment.

Naamut, prisoner No. 17.

The wretched father of the deceased woman is a very old man, and probably had no courage to inform against his brother and relations, and I think a sentence of two years' imprisonment will suffice as a warning in his case.

The jury without hesitation returned a verdict of *guilty* against these prisoners.

Remarks by the Nizamut Adawlut.—(Present: Messrs. C. B. Trevor and H. V. Bayley.) The prisoners all plead *not guilty* of the crimes with which they have been charged.

The Sessions Judge has entered so fully and clearly into the evidence that it is unnecessary here, to set forth the facts of the case in detail; it is sufficient to remark that the deceased, Bechun Bebee, the wife of the prisoner, No. 11, Azim Khan, had, against the wishes of her husband, four days before her death, gone to the house of Boro Alladee, prisoner No. 13, (a connection of her own by marriage,) situated in the same village and was brought back on the evening of the 1st June, the day previous to the night of murder, by Jadoo, witness No. 8, a younger brother of the prisoner, Azim. That she returned for the night and was never again seen alive. Her body was buried before daybreak and it was reported that she had died of cholera. Suspicions getting abroad, information was given of the circumstances to the Darogah of Thannah Panskourah, who, on the 5th June, exhumed the body.

The deposition of the medical officer is to the effect that he examined the body of a female, on the 7th June, which had evidently been exhumed. It was partly decomposed, but not sufficiently so to destroy surgical evidence; he found a deep incised and penetrating wound dividing the trachea, right carotid artery, and jugular vein, and a knife plunged into the throat would have caused such a wound, which, from its appearances, must have been inflicted during life. This wound was the

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cause of death; and death must have been almost immediate, as the flow of blood must have been great. In answer to a question put by the jury as to the difference in the appearance of a wound inflicted before and after death, the medical officer replied that after death the edges of the wound would be inverted and there would be no extravasation of blood into the surrounding cellular vascular tissues. If inflicted during life the appearances would be just the reverse, the wound would gape and the surrounding tissues would be extravasated. In this case the appearances were very distinct.

In the face of this clear evidence, there can be no doubt that the deceased met with her death by violence. The only question is, by whose hand was the crime committed?

The evidence in this case is that of relatives who were sleeping in the homestead in which the crime was committed. They are most unwilling to give evidence at all, and have before the Sessions Judge, receded from a part of the statement which they made before the Magistrate and the Police; it however appears clearly from the evidence of the witnesses, Nos. 7 and 9, Khatoo and Doomun Bebee, that they were awakened during the night by the noise of the cry of Bechun's infant, and that they then went to the house in which Bechun was sleeping. Witness No. 9, deposes clearly, to having seen the deceased's throat cut and to have seen Azim with his father Ruheemdad Khan, in the verandah and to have heard the latter say to the former "your dying day has come." Witness No. 7, also, after much questioning by the Judge, admits that she saw the deceased's throat cut and the bed clothes saturated with blood; that Azim, prisoner No. 11, and Ruheemdad Khan, prisoner No. 12, counselled the burial of the body and that her brother, Boro Alladee, and others, whose names she does not give, buried the corpse of the deceased. Witness No. 8, Jadoo, deposes that Azim, prison No. 11, Ruheemdad Khan, prisoner No. 12, and the other prisoners buried the corpse, and that he accompanied them taking with him a pitcher of water; that when first he went to the spot, he saw Azim, standing in the compound of the house but saying nothing; that Azim, had a *tauree* knife, which witness has not seen since the day of the murder.

Now, from the evidence of the above witnesses, it is proved that the deceased on her return home retired to sleep; she within the house, her husband in the verandah; that during the night she was cruelly murdered by having the throat cut; that the prisoners, Nos. 11 and 12, counselled the immediate burial of the corpse, and the body was buried before day light. From other evidence in the case, it appears that a report that the deceased had died of cholera was propagated by the relatives of the deceased, Azim and Ruheemdad, and subsequently, by all the other relatives. That the deceased was of unimpeach-

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able character, but that her husband was displeased with her going to the marriage at the house of Boro Alladee, prisoner No. 13.

The defence entered up by the different prisoners, as given in the second paragraph of the Judge's letter, is of no avail.

It is not as remarked by the Sessions Judge, hinted that the murder could have been committed by any one sleeping in the homestead, save by her own husband, he was sleeping close to the spot where his wife was; and no other person could have access to the spot without his knowledge. No sufficient motive for the murder appears in evidence, but even in its absence, placing the evidence on the record and the conduct of the prisoner Azim subsequent to the deceased's death, together, no other presumption can be arrived at than that the deceased was murdered by her husband Azim the prisoner No. 11, for some cause unknown, probably with a *tauree* knife, a weapon which is in the possession of most of the ryots in the districts of lower Bengal.

At the same time it is proved that the prisoners Roheemdad Khan and Boro Alladee Nos. 12 and 13, with a view to screen the offender, Azim, and thus frustrate the ends of justice counselled the burying of the body immediately that is before day light; by this conduct they have clearly rendered themselves accessaries after the fact to the murder of Bechun.

It is not improbable that prisoner No. 14, was implicated to an equal extent with the prisoners Nos. 12 and 13, but the evidence against him is not satisfactory or sufficiently clear to warrant a conviction.

As to prisoner No. 17, Neamut, who has been charged simply with privity to this murder, that he was cognizant that a murder had been committed, not merely from report, but from what passed before him subsequently to its commission cannot be doubted; neither can it be questioned that strictly speaking, it was his duty to disclose the crime to the authorities with a view to bring the offender to justice, and that failing so to act, the law holds him guilty of a criminal offence; but in the present case looking to the particular relation in which the deceased and the prisoner Azim stand to him, that of daughter and son-in-law, and to the influence which the other members of the family must have exercised over him when in grief at the loss of his daughter, and also to the passive nature of the crime with which he has been charged, the Court think that the law should not be enforced against him. Had it appeared in evidence that he had by any act rendered himself an accessary after the fact, the Court would have looked upon his case, just in the same light as it has looked at the case as regards the other prisoners Nos. 12 and 13.

It was urged before us, in argument by the vakeel who appear-

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ed on the part of the prisoners. 1st. That the prisoner No. 11, Azim could not be convicted of wilful murder inasmuch as there were no eye-witnesses to the fact; and 2nd, that none of the other prisoners Nos. 12, 13 and 14 could be convicted of being accessaries after the fact, inasmuch as it has not been proved that they gave any direct personal assistance to the alleged murderer with a view of enabling him to escape apprehension, trial or punishment.

In answer to the *first* objection, the Court observe that there is no rule in Mahomedan law rendering the evidence of eye-witnesses necessary for a conviction of wilful murder. That law only bars *kissas* or retaliation in cases in which the evidence is simply presumptive; but admits of discretionary punishment, even to perpetual imprisonment. But be the Mahomedan law on the subject of punishments for wilful murder what it may, it can in a case of this nature, be no guide for the Court, which must act in accordance with the terms of Section 2, Regulation VIII. of 1799, and, unless there be circumstances rendering the party found guilty of wilful murder a proper object of mercy, pass a capital sentence on him.

On the *second* objection the Court would observe, that it is not necessary in order to make parties accessaries after the fact, that there should be evidence of any direct act of personally receiving, comforting or assisting the principal, but any act done, impeding or tending to impede the course of justice, will make the party doing it with knowledge that the crime has been committed by the principal, an accessary after the fact.

In the present case as before observed, the Court has no doubt from the evidence before it, that the prisoners No. 12 Ruheemdad and No. 13, Borro Alladee with full knowledge of the crime committed by Azim, did aid and assist him in burying the corpse of the murdered woman during the night, with a view of concealing the crime, and thus enabling the offender to evade justice.

Under the view of the case above expressed, the Court finds the prisoner No. 11, Azim, guilty on violent presumption, of the wilful murder of his wife Mussamut Bechun Bebee and sentences him, as recommended by the Sessions Judge, to death, by being hanged. It also finds the prisoners, Nos. 12 and 13, guilty of being accessaries after the fact to the above crime and sentences them to 10 years' imprisonment with labor and irons. Not being satisfied with the evidence against the prisoner No. 14, and considering it unnecessary to put the law in force as against prisoner No. 17, it directs their immediate release.

SUMMARY CASE.

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SUMMARY CASE.

NOVEMBER 1859.

PRESENT:

H. V. BAYLEY, Esq., *Offg. Judge.*

GOVERNMENT AND ANOTHER

versus

RAJCHUNDER PAL AND NUNDO LALL ROY.

Rajshahye.

1859.

November 22.

Case of RAJCHUNDER PAL and another.

The accused should always be confronted with the prosecutor and with the witnesses for the prosecution before conviction, unless he himself distinctly waives the right.

This case was called for by the Nizamut Adawlut, from the Sessions Judge of Rajshahye, confirming on the 29th June, 1859, the sentence of the Joint Magistrate convicting the defendant of assault.

Remarks by the Sessions Judge.—This was a case of common assault, if looked upon as a single occurrence, and the first question is whether the charge has been proved against the appellants.

Upon this point, I see no good reason for dissenting from the conclusion to which the Joint Magistrate has come.

The appellant's pleader, laying no stress upon the evidence adduced for the defence, impugns that for the prosecution and, in addition to the pleas urged in the Criminal Court below, brings forward mainly these—

That the witnesses are not persons entitled to credit.

That they were not examined in presence of the defendant.

But, in regard to the first plea, the witnesses are not shewn to be unworthy of credit, nor does it appear that there was anything extraordinary in their being present at the time of the alleged occurrence. The defendants have not shewn that the witnesses lived at such a distance from the spot as to make it unlikely that they should have happened to be there.

As to the second plea, I have to observe that the defendants, who are persons of education and respectable position in life, were at liberty to pray that the prosecutor and witnesses might be confronted with them.

It would have been more regular if the Joint Magistrate had expressly put the question to them whether they desired the parties to be summoned *de novo* or not; and if it appeared that any failure of justice had resulted from his omission to do so, I would have annulled the sentence and sent back the proceedings for that purpose; but as it appears to be merely a dilatory plea for the purpose of invalidating the sentence only, I am not disposed to act upon it; and it remains only to be considered whether the Joint Magistrate has shewn sufficient

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Case of RAJCHUNDER PAL and another.

reason for the somewhat severe sentence he has passed. I am of opinion that he has given fair reasons, and indeed he has not approached the limit of the power which, in regard to such cases, he possesses under Section 19, Regulation IX. of 1807. I therefore affirm the sentence.

Resolution (No. 667) of the Nizamut Adawlut (Present: Mr. H. V. Bayley.) The gist of this appeal is, that the defendants have been punished without being confronted with the prosecutor and the witnesses, on whose statements and depositions such punishment has been awarded. The same point was urged before the Sessions Judge by defendants in their appeal from the orders of the Joint Magistrate.

The Sessions Judge records, as the ground for overruling this plea, "that the defendants, who are persons of education and respectable position in life, were at liberty to pray that the prosecutor and witnesses might be confronted with them," but adds "that it would have been more regular if the Joint Magistrate had expressly put the question to them whether they desired the parties to be summoned *de novo* or not; and if it had appeared that any failure of justice had resulted from his omission to do so, I would have annulled the sentence and sent back the proceedings for that purpose."

A failure of justice is involved in the very fact of a party being punished without being confronted with his accusers and with the witnesses for the prosecution. It is true, that Magistrates are allowed to take the prosecutor's statement and the depositions of the witnesses for the prosecution before summoning a defendant; but that is solely in order that there should be a *primâ facie* case against a defendant before he be even summoned. Further, it is not only more regular, but positively necessary in order to render punishment legal, that the parties punished should have before them, in the Court in which they are tried, the parties on the strength of whose statements they are so punished, and it is only where the record shews that defendants distinctly waived this right that they can be legally punished without being confronted with the prosecutor and the witnesses for the prosecution.

The attention of the Sessions Judge is requested to Section 47, Regulation IX. of 1793, and the case of Kunaye Sheikh p. 663, Vol II. Nizamut Adawlut Reports 1852, dated October 1852. Present: J. R. Colvin, Esq.

The Court reverse the order of the Sessions Judge and remit the fine.

REGULAR CASES.

DECEMBER,

1859.

REGULAR CASES.

DECEMBER, 1859.

PRESENT:

G. LOCH, ESQ., *Offg. Judge.*

GOVERNMENT AND ANOTHER,

versus

MOOKTARAM SAHOO, (No. 20,) SUNNESSEE DOME, (No. 21,) AND NOBIN DOME, (No. 22.)

Beerbhoom.

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December 2.

Case of MOOKTARAM SAHOO and others.

Held that the Circular Order of 24th July, 1835, (page 185 of Carrau's edition) by which Sessions Judges were declared to have power to order magistrates to commit for trial, parties charged with crimes was still in force.

CRIME CHARGED AND CRIME ESTABLISHED.—Attempt to commit a dacoity in the house of Buddun Sahoo.

Committing Officer.—Mr. R. O. Heywood, Officiating Magistrate of Beerbhoom.

Tried before Mr. O. W. Malet, Sessions Judge of Beerbhoom, on the 7th July, 1859.

Remarks by the Sessions Judge.—This is a continuation of case No. 2, for December, 1858, (vide foot note)* reported on

* On 14th Kartick the prosecutor was sleeping. He was awakened by his wife, and seeing a light, became aware that dacoits had entered his house. Taking a knife in his hand he went to the door of his room and called on his nephew, who was sleeping in the same house, but in another room. He joined his uncle by climbing over the partition wall, armed himself with a sword that was by chance at hand, and rushing out with a shout, the dacoits, who had begun to batter the door of the room, took to flight. The nephew Nepal Sahoo succeeded in seizing two of them; one got away from him, the other he managed to retain, giving him occasionally slight cuts with his sword, as he says, to keep him quiet. The neighbours coming up, the prisoner was made over to the Chowkeedar, and information sent to the Police. Prosecutor recognized one of the dacoits, but he has not been sent up for trial though named by several of the confessing prisoners. A second was also named, on being brought to prosecutor's recollection by his foujdaree deposition. The Police made the enquiries, and it is proved that the attempt at dacoity was made, the prisoner Keramut Ali *alias* Haboo Sheikh confessed to them, and from his confession the other party No. 3, was arrested.

Witness No. 1.

Prosecutor and witness No. 1.

Witnesses Nos. 2 and 3.

Witnesses Nos. 1, 2, 3, 4, 5 and 6.

The special proof against each man is as follows:

No. 2 was caught in the act. He confessed before the Police but denied before the Magistrate and myself. In this Court he tried to prove that he was an innocent person, and that he had been seized by the witness "Nepal Sahoo" without cause;

Witnesses Nos. 1, 2 and 3, and prosecutor.

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the 14th January, 1859, in which five men were punished: the order was confirmed in appeal. The men now tried were sent up by the Magistrate on my requisition. The evidence against them is chiefly given by their old accomplices, who I must mention, are not approvers, they not having had pardon, or any other indulgence offered them. Corroboration is therefore not legally required, but for my own satisfaction I have thought better to record some.

No. 20 is shewn to have taken a leading part in the arrangements for the dacoity and was himself at it. Witnesses Nos. 1, 2 and 3.

On referring to the original *nuthee*, I find that he was not mentioned in the deposition by prosecutor before the Police, but after his conviction, having said that he wished to say something, he made a deposition incriminating the Police for allowing some of the party to escape, and making admission. This does not appear in the *nuthee*, as it was done after the trial had been completed, and has been forwarded to the Magistrate.

Nos. 3 and 4, having been named in the mofussil confession were apprehended. They confessed both before the Police and the Magistrate. No. 3 at first denied before me and pleaded *alibi*, but again recanted and said that his former confessions were true and declined to call his witnesses. No. 4, denied and pleaded *alibi*. Out of his three witnesses only one spoke of it.

Nos. 5 and 6, were named in the first confession, that of prisoner No. 2, as two domes; on assembling the people of that caste, these two men were found to be absent; and the fact of their having been called from their work by a Mussulman not brought to trial was proved. (Witness No. 22.) They were apprehended and confessed in the mofussil before the Magistrate and before myself, declining to call their witnesses, though they at first denied, and the evidence in their favor had been taken. (Witness No. 23.)

I find the five prisoners guilty as charged, and sentence them to seven years' imprisonment each with labor in irons.

Nepal Sahoo, the nephew of the prosecutor, has behaved extremely well. By way of encouragement to people to defend their own houses, and as some compensation for the expenses that his uncle and himself have put to, and considering that it is to his good conduct that the five men have been convicted, I direct that a reward of 25 Rs. be given to him.

Jemadar Assuk Ali behaved well, and showed much intelligence and aptness for duty in apprehending the two dome prisoners. The two village chowkeedars also were on the spot at the time of the attempt of dacoity and gave what assistance they could.

As to the Darogah, in going through the case, it appeared to me that he had been slow, and had not done all that might have been done to apprehend the offenders, but his conduct will probably be enquired into in consequence of the depositions of two of the prisoners in this case, which have been sent to the Magistrate.

Another point that strikes me is that had any two of the prisoners when first brought in, been made Queen's evidence, it is very probable that the greater part of the gang might have been convicted.

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though the old man strongly asserts that he did so. He is mentioned in the deposition before the lower Court. He is named in the confession of several parties in the mofussil, the foujdary and before me. In his defence he states that the case has been brought against him through enmity of the prosecutor; but the fact is that he was not brought to trial on that ground, but on information given by witness No. 1, and though he brings no less than ten witnesses, neither he nor they can say where he was on the night of the crime, and as to the enmity as it would be as likely to cause a man to get up a dacoity against another as to accuse one falsely.

Nos. 21 and 22. The evidence shows that these men were at the dacoity, and this is coroborated by former statements of one man (in the original *nuthee)* both before me and in the mofussil, and by the confessions of two others, before the Police and the Magistrate. For defence they both plead enmity on account of intrigue on the part of the witnesses. Their evidence is nothing in their favor.

Witnesses Nos. 1, 2 and 3.

I convict prisoners Nos. 20, 21 and 22, as charged, and sentence them according to their degrees of guilt, namely, No. 20 to (9) nine years' imprisonment, with labor and irons, Nos. 21 and 22, to (7) seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut —(Present: Mr. G. Loch). The prisoners in this case were committed for trial by orders of the Sessions Judge, who, in reply to a Resolution of this Court, dated 30th September last, stated that he had done so on the authority of the Circular Order of 24th July, 1835, No. 175. Before deciding this case, I thought it advisable to submit for the opinion of the whole Court the question whether the above Circular had or had not been superseded, as the tenor of a later Circular, of 16th December, 1842, No. 123, appeared to hold that since the enactment of Act XXXI. of 1841, the power of directing committals could no longer be exercised by Sessions Judges in Bengal. It was held by the Court that the Circular of 24th July, 1835, was still in force and that the Sessions Judges had, under the powers conferred on them by law, authority to order such commitments.

With regard to the prisoners who have appealed from the sentence of the Sessions Judge, I think the charges are satisfactorily proven against them. Though there be some discrepancies in the present and former statements of the witnesses, these do not materially affect the credibility of their evidence, I therefore dismiss the appeal and confirm the sentence passed by the Sessions Judge.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge.*

GOVERNMENT

versus

AMRITONATH JHA *alias* CHAMAROO THAKOOR.

Dinagepore.

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Case of AMRITONATH JHA *alias* CHAMAROO THAKOOR.

Prisoner was convicted of issuing forged *hoondees* knowing them to be forged, with a view of defrauding certain bankers and securing the services of a Calcutta barrister to conduct a case, which he had in Court.

CRIME CHARGED —1st count, forgery, in having fabricated with fraudulent intent, two drafts of Rs. 500 each, dated respectively, the 25th and 26th Magh, 1265, upon one Puddo Lochun Shaw, in favor of one Kalee Churn Roy, and bearing the signature of one Gour Soonder Chand; 2nd count, procuring the fraudulent fabrication of the said drafts; 3rd count, issuing with view to his own gain and to the detriment of the said Gour Soonder Chand the said drafts knowing them to have been so fabricated.

CRIME ESTABLISHED.—Issuing with a view to his own gain and to the detriment of the said Gour Soonder Chand the said drafts knowing them to have been so fabricated

Committing Officer.—Mr. J. D. Gordon, Officiating Magistrate of Dinagepore.

Tried before Mr. J. Grant, Sessions Judge of Dinagepore, on the 2nd July, 1859.

Remarks by the Sessions Judge.—The prisoner was charged with forgery and issuing forged drafts. It appears that he obtained from a Dinagepore Banker a 25 Rs. draft; from which he fabricated two for 500 Rupees each, payable to a mookhtear in Calcutta, who was in treaty with a Barrister about coming to Dinagepore to conduct an Act IV. of 1840 case for the prisoner. The drafts were accepted in Calcutta but not paid, no letter of advice in respect to them having been received. The mookhtear paid the amount to the Barrister from his own funds and wrote to Dinagepore for explanation. The case is clearly proved against the prisoner by the evidence of the Calcutta mookhtear, the prisoner's vakeel, who wrote to the mookhtear on the part of the prisoner, the gomashtah, mohurrir and other servants of the Banker supported by the two forged drafts evidently traced from the 25 Rupees one, the advice as to the latter, the Banker's books, and sundry letters of the prisoner to the Calcutta mookhtear. The prisoner's defence is lengthy and contains much that is irrelevant. The main point in it is, that he accuses the Banker's gomashtah of having leagued with his opponents in the Act IV. of 1840 case to

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prevent the coming of the Barrister and having, therefore, suppressed the advice as to the two 500 Rupees drafts, altering his books accordingly, and that the said drafts are genuine and were duly paid for by him. It is evident that he, from the beginning, intended to adopt this line of defence, as in a letter to the Calcutta mookhtear dated the 29th Magh, four days after the 25 Rupees draft had been obtained, and when the forged drafts could barely have got to Calcutta, he told him of the alleged conspiracy between the Banker's gomashtah and his opponents and that the gomashtah had sent advice as to the 25 Rupees draft intended for the mookhtear himself but not as to the other drafts. In the Foujdaree he said, that he could not speak positively as to having sent or signed this letter, and in his defence before me he did not allude to it. It seems from this that the prisoner was determined to have the Barrister up at all risks and trusted to get out of the draft scrape by his ingenuity and influence, with or without making good the money. The *futwa* of the Law officer convicted the prisoner on the 3rd count, in which I concurred.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The prisoner Amritonath Jha, *alias* Chumaroo Thakoor appears to have been a frequent litigant in the Dinagepore Courts and to have borne a very doubtful character. It appears from the evidence in this case, that he had a dispute with one Ahmed Reza regarding some land which was decided in his favor by the Joint Magistrate of Julpigooree, but that his opponent appealed to the Sessions Judge and he (the prisoner) became anxious to secure the services of an English barrister. He accordingly applied to his Vakeel Hurro Chunder Bhadooree, who wrote on the subject to a mookhtear in Calcutta of the name of Callee Churn Roy. Calleechurn's reply was that Mr. Montriou of the Supreme Court bar was willing to undertake the journey for 2000 Rupees, and Hurro Chunder on the 26th Magh informed the prisoner that he must send Rs. 2,200 to Calcutta to secure the services of that gentleman, the extra 200 being apparently intended for Mr. Montriou's Amlah and his dâk expenses. Hurro Chunder had previously written to Calleechurn that the prisoner would give him 25 Rs. for his trouble. The prisoner agreed to these terms and requested Hurro Chunder to write at once for Mr. Montriou. Hurro Chunder however informed him that the money must be sent immediately and the prisoner said if he would write a letter to the Mookhtear, Calleechurn Roy, that he would get a *hoondee* and enclose and despatch it himself. Hurro Chunder accordingly write a letter as directed, mentioning that a *hoondee* for Rs. 2,200 was enclosed, and gave it to the prisoner who took it away with him. On the same date the prisoner went to the banking-house of Narain Chunder Chowdree in Dinage-

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pore, which is managed by a gomashta of the name of Gour-soonder Shaw; and got a *hoondee* for 25 Rs. on the firm of Sonatun Shaw of Koomartoolee in Calcutta, giving the name of Amrit Lal Jha. From this *hoondee* it is alleged by the prosecution he either traced or caused to be traced two *hoon-dees* on the same firm for Rs. 500 each, dated respectively the 25th and 26th Magh and payable two days after sight. These *hoondees* together with the vakeel's letter he enclosed in a letter of his own to Calleechurn Roy, dated the 26th Magh, in which he informed him that he was unable then to send more than 1000 Rupees, but that the balance should be forward-ed immediately concluding with a request to the Mookhtear, to write to him direct and not through the vakeel. The Mookh-tear took the *hoondees* on the 30th Magh to the banking house in Koomartoolee where they were sighted by a Mohurrir Go-mashtah of the firm Puddo Lochun Shaw, who was in an inner room supposing, he says, from what the Mohurrir called out to him, that it was the *hoondee* for 25 Rs. of which he had received advice from the house at Dinagepore. Two or three days afterwards Callee Churn returned to get the *hoondees* cashed, when the gomashtah discovered his mistake and told him that he had only received advice of one *hoondee* of 25 Rs. and could not cash those now presented until their advices ar-rived. Callee Churn not suspecting that there was anything wrong, paid Mr. Montriou 500 Rs. out of his own pocket and got that gentleman to write to the Sessions Judge, requesting that the case might be postponed till his arrival. Callee Churn at the same time wrote to Hurro Chunder Bhadooree to have, what he supposed, the mistake rectified, and the gomashtah Puddo Lochun Shaw addressed the house at Dinagepore on the same subject. The Dinagepore gomashtah wrote back to say that he had only given one draft for 25 Rs. and knew nothing of the two drafts for 500, which had been presented to the Calcutta house. The Calcutta firm on this sent him full parti-culars of the *hoondees* and their presentation from which he discovered that a forgery had been committed and on the 7th Falgoon, he charged the prisoner with the offence at the Thannah. The vakeel, Hurro Chunder Bhadooree, had, at the same time, been searching for the prisoner to get from him some explanation of the story which he had heard from Calee Churn Roy and on the 6th or 7th of Falgoon the prisoner came to his house. Hurro Chunder then in the presence of another vakeel, one Gokool Chunder Sein, questioned him on the subject of the *hoondees* when he denied having taken any *hoondees* from the Dinagepore house. He was then asked where he had got the *hoondees* he had forwarded, but he gave no intelligible answer and went away with a promise of remit-ting to Calee Churn Roy the 500 Rs. he had advanced for him which however he never did.

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On the 7th Falgoon he went to the thannah at the same time with Banoo Burkundaze, the servant whom the banking house Gomashtah had sent to prefer the charge of forgery, and made a counter-complaint against the Gomashtah of having assaulted him and robbed him of 500 Rs. and a bundle of papers. He also filed a suit against the Gomashtah in the Civil Court on the allegation that he had received 1000 Rs. from him for the *hoondees*, but that in collusion with his opponent Ahmed Reza and his vakeel Hurrochunder Bhadooree, he had sent no letters of advice and now endeavoured to defraud him of the money by denying its receipt, he was however, committed to the Sessions Court on the charge of forgery and fraudulently issuing forged cheques knowing them to be forged, and has been convicted of the latter offence and sentenced to five years' imprisonment with labor in irons.

Against this sentence he now appeals and his case has been most ably argued by Mr. Newmarch. It is contended for him that there is extreme improbability in the case made by the prosecutions; that the prisoner must have been well aware that contemporaneously with the arrival of the *hoondees* would arrive a letter from the banking house giving advice of a *hoondee* having been granted for 25 Rs. only; that he could not therefore have reasonably hoped to obtain payment of these *hoondees* and to secure the attendance of counsel by means of the alleged forgery; that if he had forged the *hoondees* at all, he would surely have forged one for the full amount of 2,200 Rs. instead of needlessly running additional risk by counterfeiting separate cheques; that it is impossible to suppose that the prisoner would have made evidence against himself by tracing the two *hoondees* from one another, or from the same original so closely as had obviously been done, the two when laid over each other corresponding except as to amount in the most minute particulars, and that the prisoner would not have taken out the 25 Rs. draft or forged the other drafts in the name of Amrit Lal Jha, his own name being Amritonath Jha. It is further urged, that the evidence of the gomashtah and the vakeels is not to be relied on; that the gomashtah gives in the Magistrate's Court, a most damaging conversation with the prisoner in which the latter is represented to have said,—"Suppose I did forge the drafts, I have not got your money, why then prosecute me?" but that this conversation is not alluded to in the Sessions Court; that the memo. which appears on the top of the letter of advice for the draft of 25 Rs. to the effect, that in future the firm would not give Amrit Lall Jha any drafts as he was an untrustworthy man and the explanation which the gomashtah gives of this memo. in evidence, that he had been told Amrit Lal was a man who was capable of changing

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a 25 Rs. draft into one for 500 are highly suspicious; that the gomashtah can produce no book containing a copy of the draft for 25 Rs.; that the presence of the gomashtah's witness Kisto Kamar, was not alluded to in the gomashtah's first deposition; that the evidence of this person and that of the other witnesses is very unsatisfactory, and that there are many improbabilities in the statement of the conversation with prisoner given by the vakeels Hurrochunder Bhadooree and others. The charge it is contended, is the result of a conspiracy between prisoner's opponent Ahmed Reza, his vakeel Hurrochunder Bhadooree and the banking-house gomashtah, prisoner really did pay 1000 Rs. to the gomashtah and obtained two *hoondees* for 500 each, but in order to defeat his object of obtaining counsel, the gomashtah was bribed not to send the letters of advice and subsequently finding that the prisoner was about to prosecute them for other fraud, the conspirators traced the two *hoondees* which they have filed, in such a way, that the fact of one being traced from the other must be palpable and produced them as the *hoondees* which the prisoner had forwarded to Calcutta.

I have given every consideration to the arguments of the prisoner's counsel, but the theory of the conspiracy which has been set up in his behalf appears to me to be infinitely more improbable than the case for the prosecution, and a review of the whole of the evidence has left no doubt on my mind of the prisoner's guilt.

The *hoondees* were despatched on the 26th Magh. On the 29th a letter was addressed by the prisoner to Caleechurn Roy in which he tells him that his opponents, having learnt that he was about to retain a barrister, had bribed Gour Soonder not to send the letter of advice for the two *hoondees* of Rs. 500 and had got him to limit his advice to the *hoondee* for Rs. 25, which he, Amritonath, had intended to send to the mookhtear as a recompense for his trouble. Now as the Judge has remarked, if Gour Soonder really had undertaken to practice this fraud, Amritonath would have been the last person to hear of it. And it is certainly in the highest degree improbable that he could have acquired within three days such a very accurate knowledge of the proceedings of the conspirators as this letter evinces. But, in addition to this, it is to be observed that the prisoner has produced no proof whatsoever of this conspiracy, has not shewn us how he acquired his knowledge of it and, although he has not denied this letter, has declined to acknowledge it, declaring that he could not tell whether it was in his hand-writing or not. His Counsel assume that it is not his letter, but we have the evidence of Caleechurn that it was received by him in the same way as the other letters which are admitted by the prisoner; the hand-writing is clearly identical and it is too much to ask us to believe that this letter, giving

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the mookhtear information of the conspiracy, was written by the conspirators themselves. It would no doubt have been more satisfactory if the Sessions Judge had taken the evidence of the vakeel Hurro Chunder Bhadooree to the plaintiff's hand-writing in the letters which have been filed, but I entertain no doubt from the evidence direct and circumstantial which has been adduced, that the letter was written by the prisoner. It shows that the line of defence which the prisoner has adopted was prepared by him from the commencement with considerable cunning. Another very important letter of the prisoner's to Caleechurn is that dated the 13th Falgoon. In this he informs him that in consequence of the non-arrival of Counsel the case in the Sessions Court had been decided against him, that he intended however to prefer a special appeal to the Sudder Court and would start for that purpose in seven or eight days for Calcutta, where he would lodge with him. He expresses his satisfaction at the mookhtear's conduct in having engaged Counsel, although he had not received the money and promises to repay him the sum advanced to Mr. Montriou on his arrival in Calcutta; "you will keep the two *hoondees*" he says, and then after mentioning that he had brought an action against the gomashtah for their amount he goes on to direct, that if the gomashtah or the vakeel should write to him for these *hoondees* he must not give them up. "If you do," he says, "you will be responsible, and if there is any difficulty you will have to give evidence. On these accounts you must be careful not to give the *hoondees* to any one. On my arrival I will defray all expenses and will take the *hoondees*. Indeed it is proper to give me the *hoondees* which are mine. I will ask for them on my arrival. Be very careful in this matter and give the *hoondees* to no one," and he then goes on to tell him he has numerous cases in Court and will retain him upon a monthly salary and give him a general power of attorney, ending his letter with the reiterated assurance that on his arrival he would pay every thing and with the emphatic injunction "give the *hoondees* to no one." The extreme anxiety which he displays in this letter to get possession of the *hoondees* is, when coupled with the other facts of the case, very suspicious. The suggestion that the *hoondees* now produced have been forged by the prisoner's opponents and are not the same which he sent to Caleechurn, besides its inherent improbability, is in so far as the latter portion of the suggestion is concerned, directly negatived by the evidence of the gomashtah of the Calcutta banking-house, and the Calcutta mookhtear Caleechurn, whose testimony is, in my opinion, above suspicion. The *hoondees* are undoubtedly the same which were enclosed in the letter to the mookhtear of the 26th Magh, which it is not denied was written and sent by the prisoner. That these *hoon-*

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dees are forgeries, is not disputed. The supposition that the gomashtah of a native banking-house, a class of men remarkable for the honesty and good faith with which they transact their business, should, for a bribe of 1000 Rs., have entered into a çonspiracy which must have ruined the character of his house, and should have carried it out by the extraordinary device of giving the prisoner *hoondees* copied one from another in such a way that they might be afterwards challenged as forgeries, is quite incredible. The evidence for the defence, which consists in the depositions of certain servants and dependents of the prisoner, to the effect that they saw him pay for the two *hoondees* of Rs. 500, would therefore be of no avail to the prisoner, even if I placed any reliance upon it, which however I do not.

The direct evidence in the case, when read by the light which the prisoner's letters and his subsequent acts throw upon his proceedings, leaves no doubt on my mind that the prisoner having no means at the time, of remitting the sum of money mentioned by the vakeel Hurro Chunder and yet keenly bent on securing the services of a barrister which he probably thought a certain means to the defeat of his opponent, forged the two drafts now before the Court from the draft of 25 Rs. which he had obtained and despatched them to Calcutta, either in ignorance that letters of advice were usually sent when *hoondees* were granted or with the intention, which circumstances prevented his carrying out, of forging the letter of advice also. He probably thought that 1000 Rs. would be sufficient to induce Mr. Montriou to start and that he would be able to repay such a sum if he was ever in danger of the fraud being brought home to him which he probably might not be able to do, if the amount was so large as 2,200 Rs. or he may have meant to pay Mr. Montriou the balance of 1200 Rs. on his arrival at Dinagepore. Probably also, he had an object in avoiding a forgery for the exact sum which his vakeel knew he had engaged to send to Calcutta, and the same object that, viz. of rendering the trace of his connection with the forgery as obscure as possible and facilitating his denial of any knowledge of the transaction if he should hereafter find this necessary, evidently led him to give the name of Amrito Lall, instead of Amritonath Jha at the banking-house when he applied for the *hoondees* of 25 Rs. On the 29th Magh having either learnt that a letter of advice for the *hoondees* of 25 Rs. had been sent, or despairing of being able to forge the letters of advice for the two *hoondees* he had himself forwarded, he began to prepare by his letter of the 29th Magh for the bold defence which he ultimately adopted, doubtless calculating that the bankers and all the parties concerned would be intimidated by his threat of turning the tables on them, and would refrain from prosecution in a case in which they

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had sustained no damage. The *hoondees* he hoped to get into his own hands and destroy, while he calculated on securing the silence of the Calcutta mookhtear by the mingled threats and promises which he made use of in his letter of the 13th Falgoon. The evidence of the witnesses for the prosecution is in the main, clear and consistent, and bears the impress of truth. There are no discrepancies, except such trifling ones as result from the evidence taken in the Sessions Court not being so full as that taken before the Magistrate, or such as are fairly attributable to forgetfulness. That the gomashtah of the Dinagepore house, alarmed at the audacity of the prisoner's defence may have endeavoured to strengthen his case by the addition of the suspicious note on the letter of advice and the subsequent evidence, which he gave on that point on which Counsel have commented, is very probable. We frequently see men in this country with perfectly good cases bolstering them up in that manner, but it is quite possible that the note, though rendered suspicious by the subsequent explanation, may be a *bonâ fide* one. There is no proof that it is otherwise. On the whole, the evidence is, in my opinion, quite conclusive of the prisoner's guilt and I accordingly reject the appeal and confirm the sentence passed by the Sessions Judge.

SUMMARY CASE.

DECEMBER,

1859.

SUMMARY CASE.

December 1859.

PRESENT:

H. V. BAYLEY, Esq., *Offg. Judge.*

24-Pergunnahs.

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December 23.

Case of UMRITO LALL BANERJEE.

Held that the general dismission of a Mookhtear is illegal, but that leave of the officer presiding in the Court in which the Mookhtear appears is necessary to enable him to act in any particular case.

UMRITO LALL BANERJEE, Petitioner.

Crime Charged.—Trespass attended with violence at night on the premises of the prosecutor.

Committing Officer.—Mr. J. J. Grey, Magistrate of Howrah.

Remarks by Mr. E. Lautour, Sessions Judge of 24-Pergunnahs. The appellant is convicted of a night-attack upon the premises of the prosecutor. From the Magistrate's proceedings it appears that Umrito Lall has been twice punished before.

This conviction rests upon the evidence, which is more than sufficient.

Nothing is urged in appeal. Of course an *ex post facto* visit of the Magistrate or the Police would not be of much weight; and it is suggested that the appellant has incurred the displeasure of the Magistrate in his professional character.

The offence being fully proved I decline to interfere with the Magistrate's orders.

Resolution of the Nizamut Adawlut.—(Present: Mr. H. V. Bayley). This petitioner appeals against his general dismission by the Magistrate of Howrah, from his employment as a mookhtear in his Court and against the order of the Judge upholding that dismission.

The law under which the dismission of the petitioner from his employment of mookhtear is made, is not stated.

The Court is not aware of any law which admits of any general dismissal of a mookhtear. Section 3 of Act XXXVIII. of 1850, as explained in the Circular Order of the 20th February, 1857, No. 35, enacts that such person only shall be deemed an authorized agent within the meaning of the Act, who *by leave of the Court, Magistrate or other person* before whom the prisoner is on trial is employed by the prosecutor or prisoner as his agent. According to that Circular, the Magistrate could refuse to hear in any *particular case* an agent whom he did not think qualified, but not to order generally his dismission. There is, it is true, a letter from the Nizamut Adawlut to the Judge of the 24-Pergunnahs, dated 10th January, 1854, which states that the Magistrate has power ot dismiss for gross misconduct. It, however, is based on a

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precedent of 1848, Carrau's Summary Reports, page 164, Bishen Dyal Singh's case; while the Circular Order now cited is of later authority, and in that letter of January 10th the mention of the power of dismission is incidental.

Looking, too, to the analogy of Act XVIII. of 1852 and taking the purview of the law, as one stating the disqualifications of *pleaders* arising from dishonest or fraudulent conduct, and the context of the sentence in Section 2, distinctly referring to that species of misconduct, the Court apprehend that the "*criminal offence*" there referred to is one involving moral turpitude or infamy.

Looking, further, to the reasonable interpretation of the law, it would be most unreasonable to dismiss two pleaders under the words cited from Section 2, if convicted of a mutual assault, or of violence to a third party for a private and personal quarrel, which conviction, however, would still be a conviction of a *criminal offence.*

Under these circumstances, the Court consider the general dismission of the mookhtear illegal, and accordingly remit so much of the sentence.

QUARTERLY

No.

FOR JULY, AUGUST AND SEPTEMBER,

1859.

NOTICE.

WITH reference to Government Order, dated the 27th May, 1857, No. 2783, *Quarterly* Numbers only of selected cases are published.

REGULAR CASES.

JULY,

1859.

REGULAR CASES.

July 1859

PRESENT:

E. A. SAMUELLS, Esq., *Judge.*

GOVERNMENT AND BROTCHA PRAMANIK

versus

JAUN ALIAS JAN MAHOMED (No. 27,) BHAJIN AKONDO (No. 28,) KERAMDI AKONDO (No. 29,) MOLAM AKONDO (No. 30,) JORIPA AKONDO (No. 31,) NIZAM PRAMANIK (No. 32,) ZOFOR PRAMANIK (No. 33,) MANULLAH PRAMANIK (No. 34.) HAFEZ MUNDUL (No. 35,) KOLAM AKONDO (No. 36,) BESHOR AKONDO (No 37,) JAGIR MUNDUL (No. 38,) HAJI PRAMANIK (No. 39.) HOR MAHOMED ALIAS HORU PRAMANIK (No. 40,) HATON PAIK ALIAS HYUT MAHOMED (No. 41,) AND BHOLA PRAMANIK (No. 1.)

Rungpore.

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Case of JAUN *alias* JAN MAHOMED and others.

According to the provisions of Section 75, Regulation IX. of 1793, the intention of the criminal, inferrible from the nature and circumstances of the case and not the manner or instrument of perpetration, is to constitute the rule for determining the punishment. Consequently

CRIME CHARGED.—1st count, wilful murder of Mohobot Akondo; 2nd count, aiding and abetting in the wilful murder of Mohobot Akondo; 3rd count, being accessary to the wilful murder of Mohobot Akondo.

Committing Officer.—Mr. A. J. Jackson, Officiating Joint-Magistrate of Bograh.

Tried before Mr. F. A. Glover, Officiating Sessions Judge of Rungpore, on the 5th May, 1859.

Remarks by the Officiating Sessions Judge.—This case is referred for the orders of the superior court in consequence of a disagreement between the Law Officer and myself regarding the guilt of the prisoners.

The circumstances are as follows:—

Mohobot (deceased) had a violent quarrel with one Jaun (prisoner No. 27,) and others, parties residing in the village of Nosipore, on account of some land which he (Mohobot) had contrived to get from the zemindar and by so doing to oust the original holder. On the 7th of March Mohobot came to his brother's (Romtha witness No. 4,) house at Nosipore, to talk over the subject of his (deceased's) daughter's marriage; he refused to take his dinner with his brother, and left the house with the avowed intention of returning home to the village of Sonakaneea where he lived with his father the co-prosecutor. On his way he appears to have stopped at the house of Nizam (prisoner No. 32,) and as he was going from

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where the Law Officer, in accordance with the Mahomedan law, would have limited the conviction to culpable homicide, because the death of the deceased was caused by blows from sticks or other blunt weapons, the Court, looking to the intent of the criminals, as evidenced by the brutal and determined nature of the assault, convicted them of wilful murder.

thence he was set upon by a number of men armed with sticks, tied with ropes, and carried off to the house of Keramdi and Joripa (prisoners Nos. 29 and 31,) where he was most cruelly beaten and tortured till he died. The assailants sent intelligence the next morning, to the thannah, that a thief had been caught in the act of making a burglarious entry into prisoner No. 29's house, had been arrested and beaten. The Darogah on arriving at the scene of the so-called burglary, found that the deceased had been set upon in the open road, dragged to Karamdi's house and there beaten till he was *moribund.* Prisoners Nos. 31, 32, 33, 34, 37, 39 and 40, confessed to the Darogah, and afterwards to the Joint-Magistrate that they had taken a greater or less share in the beating which resulted in Mohobot's death, that the assault was contrived by Janoo prisoner No. 27, in revenge for being turned out of his land, and that the story of the burglary was a sham.

Before this Court all the prisoners plead *not guilty.* Some of them admit having struck the deceased, but allege that they did so, supposing him to have been a thief caught in the act.

The parties named in the margin,* were eye-witnesses to the assault upon Mohobot at different times and in different ways. Witness No. 1, deposes that as he and his brother (witness No. 5,) were sitting in their house about 8 P. M. they heard a continued heavy thumping noise, as if a body were being beaten; at his brother's desire, witness No. 1 went out to enquire, he found witnesses Nos. 2 and 3, who had apparently likewise been disturbed by the noises, standing by the doors of their houses, and at Mojah's request, they all proceeded towards the dwelling of prisoner No. 29, whence the sounds appeared to come. The prisoner No. 28, was standing in front of the house and on being asked what the noise was about replied, "Nothing, go home again." The witness Mojah not being satisfied with this explanation, again enquired on which the prisoners Nos. 29 and 30 ran at him from the house, and one of them (prisoner No. 30,) struck him on the neck with a *lattee;* witness then retreated, calling as he went for assistance. Witnesses Nos. 4, 5 and 6, made their appearance, and Mojah told them how that he had been assaulted for asking what was the matter in Keramdi's house; witness added that he saw a number of men beating somebody, whom he did not know exactly, in front of prisoner No. 29's house. On this all the men (witnesses Nos. 1, 2, 3, 4, 5 and 6,) went to Keramdi's house where, on witness No. 5's enquiry whom they were beating, prisoner No. 28 replied that they

* No. 1, Mojah.
2, Bohur.
3, Gopee.
4, Romtha.
5, Soojan.
6, Amina.
7, Soobla.
8, Soomutulla.

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had caught Mohobot in the act of theft and were beating him. The witness Romtha (No. 4,) on this begged the prisoners to spare his brother's life, but no attention being paid to his entreaties, he and the others went and summoned the head men of the village. Two of these (witnesses Nos. 7 and 8,) came and saw the man Mohobot lying senseless and groaning. This statement is corroborated in all respects by the depositions of witnesses Nos. 2 and 3. They accompanied the witness Mojah on his first visit to Keramdi's house, and saw some one being beaten by a number of the prisoners with *latties*. They heard afterwards that the man was Mohobot and that he had died during the night.

There is a discrepancy between the deposition of witness No. 3, as given to the Joint-Magistrate, and that recorded here. In the Lower Court he stated that he had identified certain of the prisoners including prisoner No. 31, and that he saw that the person being beaten was Mohobot.

Witness No. 4, (the deceased's elder brother) deposes that on the night of the murder, Mohobot came to his house at Nosipore to talk over the arrangements for his (Mohobot's) daughter's marriage, and that having settled the preliminaries, he started to go home about 7 o'clock P. M. About two hours after witness was disturbed by Mojah (witness No. 1's) calling to him and saying that he (Mojah) had gone to enquire into the cause of the noise at Keramdi's house, and had been assaulted in consequence. Mojah added that a number of prisoners were beating a man they had got down on the ground at Keramdi's house.

Witness hearing this went with some others to the prisoner No. 29's house, and there saw a number of the prisoners now before the Court beating and pounding a prostrate man, it turned out on enquiry that the man was Mohobot (witness's brother) who was said to have been caught in the act of stealing. Witness begged and prayed the assailants to spare his brother's life, but they were deaf to his entreaties. Witness then went to call the head men of the village who went and saw Mohobot senseless and groaning.

These points are all satisfactorily corroborated by the witnesses Nos. 5, 6, 7 and 8.

The witnesses (Nos. 1 to 8,) recognized amongst the men standing round and beating the deceased, all the prisoners now on trial. There is of course circumstantial difference in their depositions regarding the share taken by each particular prisoner, but the evidence tallies on all essential points. All the prisoners were identified, in some cases by as many as eight, in no case by less than three of the witnesses, whose evidence has been analysed above.

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Witnesses* Nos. 9, 10 and 11, attended the Darogah's *sooruthal;* witness No. 12, the native doctor in charge of the station, detailed the nature of the injuries inflicted on Mohobot; they were of the most fearful nature, fatal injuries from blows of *latties* on the head, abdomen and body, the calves of the legs literally beaten into pulp, the toe nail torn out by the roots and marks of severe blows all over the body from head to foot. The native doctor was of opinion that the beating must have been kept up for some considerable time.

* No. 9, Abeer.
,, 10, Domna.
,, 11, Joripa.
,, 12, Sheikh Ghola Alee.

The Mofussil and Foujdary† confessions of the prisoners Nos. 31, 32, 33, 34, 37, 39 and 40, are attested respectively by the witnesses named in the margin. The gist of these confessions is, that the prisoners took advantage of the deceased's visit to their village to waylay him in revenge for his having turned some of them out of their land; that they all more or less had a share in the beating, and that the story of deceased's having been caught in the act of robbery, was false.‡ Some of the prisoners themselves having made the hole in the wall and placed the property in it.

† No. 13, Mojoo.
,, 14, Sheroo.
,, 15, Moonshee.
,, 16, Koortub.
,, 17, Halim.
,, 18, Haran.
,, 19, Goriboollah.
,, 20, Ameer.
,, 21, Kheroo.

‡ No. 22, Arojbuksh.
,, 23, Shamsoonder.
,, 24, Gourmohun.
,, 25, Torab Ally.

Prisoner No. 27 denies having had anything to do with beating the deceased, and states that he was told by the chowkeedar that Mohobot had been seized in prisoner No. 29's house endeavouring to commit a robbery. Prisoner adds that he went to Keramdi's house, where he saw deceased lying senseless and gasping. Prisoner called three witnesses§ Nos. 26, 27 and 28, to prove that the Chowkeedar called him as he was sitting at dinner with his friends to go to Keramdi's house, where a thief had been captured in the act.

§ No. 26, Jungoo.
,, 27, Dhun Mamood.
,, 28, Rohomut.

Prisoner No. 28, makes a similar defence and supports it by the evidence of two witnesses‖ (Nos. 29 and 30,) who happened, as they say, to be dining with Bhajon on that evening.

‖ No. 29, Jearoo.
,, 30, Abadoo.

Prisoner No. 29 states that he was awoke by a noise in his house and getting up, saw a number of people beating Mohobot, cannot remember who beat him. He calls no witnesses.

Prisoner No. 30, pleads *alibi* at a place called Moyestbandi

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No. 31, Mona.
„ 32, Hosnah.

one and half *coss* distant. He calls two witnesses* (Nos. 31 and 32,) who depose that on *Sumbar*, they saw him at dinner at the time and place specified.

Prisoner No. 31, pleads that he was awoke during the night of *Sumbar* by his niece crying out, prisoner got up and saw a man making his way out of a hole in the wall. Prisoner immediately seized the intruder by the legs and held him till help came. Prisoner adds that he does not know what happened after this, as he was overcome by his feelings and retreated into his own room. Prisoner cannot tell who beat the deceased, but the man died from the effects of the beating towards morning. Prisoner called no witnesses.

Prisoner No. 32, repudiates his former confessions and declares that the deceased Mohobot was caught in the act of robbery. He calls no witnesses.

Prisoner No. 33, likewise denies both his former confessions, he admits that he was present whilst Mohobot was being beaten, but denies that he took any part in the assault. He calls two witnesses† Nos. 33 and 34, who deny all knowledge of the matter on which they were summoned to give evidence.

† No. 33, Badoo.
„ 34, Kadira.

Prisoner No. 34 repudiates his former admissions and pleads *alibi*, he calls two witnesses, one (witness No. 8,) knew nothing in prisoner's favor, the other could only account for him up to 5 P. M. of the day on which the assault took place.

‡ No. 35, Moonshee.

Prisoner No. 35 pleads *alibi* at home, but his witnesses altogether fail to support his defence.

Prisoner No. 36 denies having taken any part in the assault, was at home suffering from illness, when he heard of what had happened. He went to prisoner No. 31's house and saw the deceased lying senseless, he calls two witnesses§ to prove that he was at home till summoned by the Chowkeedar.

§ No. 38, Pir Mamood.
„ 39, Ear Mamood.

Prisoner No. 37 admits having been present at the beating, but denies that he took any part in it, he repudiates both his former confessions. His witnesses, however, knew nothing in his favor.

Prisoner No. 38 denies his guilt in toto, but makes no special defence beyond a plea of enmity on the part of the other prisoners, he calls no witnesses.

Prisoner No. 39 likewise admits having been present when Mohobot was beaten, he did not interfere; was told that Mohobot had been captured in the act of theft; he (prisoner) calls no witnesses.

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Prisoner No. 40 pleads *alibi* at home, and denies his former confessions, he calls two witnesses, who knew nothing whatever about him.

Prisoner No. 41 pleads *alibi* at Huteebunder, he calls four witnesses who, however, entirely fail to support his defence.

Prisoner No. 1 likewise pleads *alibi*, but fails equally to support it by any credible testimony.

Futwa of the Law officer.—The *futwa* of the Law Officer convicts all the prisoners of aiding and abetting the culpable homicide of Mohobot.

Opinion of the Sessions Judge.—I agree with him in convicting all the prisoners of having aided and abetted the death of Mohobot, but am of opinion that a higher degree of criminality than culpable homicide is established by the evidence. Seven of the prisoners confessed at the first to having taken a greater or less share in the assault, and they as well as the non-confessing prisoners are proved by the most satisfactory evidence, to have been of the number present when Mohobot was being beaten. The evidence of the confessing prisoners is good as regards the general circumstances of the case, and disposes most incontestably of the alleged attempt at burglary on the part of the deceased Mohobot. The evidence of the native doctor proves that the deceased was most inhumanly beaten and tortured, and that the beating must have continued for some hours, his deposition likewise proves that the deceased was tied up before being beaten.

Assuming, therefore, as proved, the truth of the *circumstances*, as stated in the confessing prisoner's depositions, it appears that the deceased was coolly waylaid by about twenty men, tied hand and foot, and beaten for some hours till he was *moribund;* the state of the deceased's body (his calves pounded into pulp) proves that the beating must have been continuous, and there is every thing in my opinion to shew that the assailants meant to kill Mohobot from the first and to make out a story of his being caught in the act of robbery, and that the crime of which they should be convicted is wilful murder, a more cold-blooded brutal taking of life I never met with.

The evidence does not show, and indeed it is almost impossible to expect that it should, the particular share taken by each particular prisoner, but it may be reasonably inferred, and the evidence at all events shews, that these men were particularly active on the occasion, that the parties in whose house (or rather before it) the beating took place, and the man who had the greatest desire of vengeance against the deceased were the chief actors in the outrage. The evidence also points out prisoners No. 28 and 30, as making themselves conspicuous in driving off parties who asked to know what was going on.

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Recommendation of the Sessions Judge.—On all of these prisoners viz. prisoners Nos. 27, 28, 29, 30 and 31, I would recommend a sentence of transportation for life and on each of the remaining prisoners, one of fourteen years' imprisonment in banishment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) There can be no doubt as to the prisoners' guilt in this case; and the only question is whether they shall be convicted of murder or of culpable homicide. The Law Officer, in accordance with the Mahomedan law, finds them guilty of culpable homicide; because the injuries which the deceased received, were inflicted with sticks or other blunt weapons. Under the provisions of Section 75, Regulation IX. of 1793, the intention of the criminal, inferrible from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of the intent) is to constitute the rule for determining the punishment. In this case it appears that the prisoners lay in wait for the deceased from a feeling of revenge; dragged him to the house of one of their number and beat him so inhumanly, that although it is not certain they premeditated his death previous to the attack, it is impossible to believe that they did not ultimately intend it; or at least, that they became perfectly careless as their passions were roused whether death did or did not ensue from their brutal conduct. I accordingly convict the prisoners of wilful murder; and, in accordance with the recommendation of the Sessions Judge, sentence Nos. 27, 28, 29, 30 and 31, to imprisonment for life in transportation beyond seas, and the rest to fourteen years' imprisonment in banishment with labor in irons.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge*, AND H. V. BAYLEY, ESQ., *Officiating Judge.*

East-Burdwan.

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Case of JEEBUN DOME.

Where the Sessions Judge recommended that capital punishment should be remitted on the ground that it was not clearly proved that the crime was premeditated, and that it might have been committed on the spur of the moment, the Court, observing that the attack on the deceased was made deliberately and with a deadly weapon from motives of petty spite, considered it impossible to infer that it was made otherwise than with the full intention of causing death and passed a capital sentence.

GOVERNMENT
versus
JEEBUN DOME.

CRIME CHARGED —1st count, wilful murder of Jadoo Dome; 2nd count, severely wounding Rookynee Domnee, witness No. 1, with intent to murder her.

Committing Officer.—Mr. H. B. Lawford, Magistrate of East-Burdwan.

Tried before Mr. H. M. Reid, Officiating Sessions Judge of East-Burdwan, on the 10th May, 1859.

Remarks by the Sessions Judge.—The prisoner pleads "*not guilty.*" It appears from the evidence* that the deceased Jadoo Dome and his wife Rookynee Domnee, (witness No. 1,) were sleeping in their house on the night of the 5th Bysack last, together with their daughter Pootoo Domnee (the wife of the prisoner) and their four younger children when witness No. 1, was roused from her sleep by hearing her husband calling out that he was wounded, and on getting up she found him lying wounded and bleeding, and saw the prisoner who had been left to sleep in the verandah of the house, standing over the deceased with a blood-stained bill-hook in his hand. On the witness endeavouring to protect her husband, the prisoner struck her two blows with the bill-hook, from the effects of which she fell down insensible. The prisoner then made off, leaving the bill-hook behind him. He was arrested† the following day at his father's house in the village of Tetoolya Daspore which is about three and half *coss* distant from Khundersona, the scene of the occurrence. The wounded persons were taken to the Hospital where the deceased died about fourteen days afterwards. His wife, the witness No. 1, eventually recovered from the effect of her wounds, which were less severe than those of her husband.

The medical officer‡ states that the deceased had two wounds on the forehead, one of which fractured the skull; the two wounds subsequently joined into one, and formed an ulcer. The wounds were the cause of

* Wit. No. 1, Rookynee Domnee.
Deposition A.
Ditto B.
Wit. No. 5, Mooktaram Mundul.
" " 6, Nobin Mundul.
" " 13, Gopeenath Bose.
" " 15, Syud Ruhmah Peshkar.

† Wit. No. 3, Judoo Jumadar.

‡ Wit. No. 7, Baboo Woomachurn Set S. A. Surgeon.

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death, and were probably inflicted by the bill-hook produced (a weapon weighing *chuttacks* 14 *tolahs* 3) The witness No. 1, had three wounds, all of which the medical officer is of opinion might have been inflicted with the same weapon.

It appears from the evidence and from the depositions (A and B) given by the deceased before the Police and the Magistrate, that the prisoner had been married to his wife Pootoo (the daughter of the deceased) about five or six years, and had been in the habit of living with her sometimes at his father's house and sometimes at the house of his father-in-law; that they had been living together for about a month previous to the occurrence at the house of the deceased, and that they had all continued to take their meals in common up to within three days of the occurrence, when the deceased and his wife discontinued messing with the prisoner owing, as the witness No. 1 states, to the prisoner failing to contribute anything towards the common fund. Prisoner's wife, however, continued to take her meals with her husband up to the day of the occurrence when he took his dinner by himself; that for three nights preceding the occurrence she has slept separately from him, and with her parents; that about twelve days previously the prisoner had given his wife an article of wearing apparel which on the day of the 5th Bysack he had demanded back from her parents; that they refused to give it back at the time, but said they would do so next day in the presence of the witnesses; that deceased had also objected to allow his daughter to return home with the prisoner; that words thereupon ensued between the prisoner and the deceased and that the prisoner attacked the deceased that same night when the latter was asleep, using in the attack the bill-hook belonging to the deceased, he being fully aware of the place where the above weapon was usually kept.

On being brought before the Police the prisoner stated* that in consequence of his having heard that his father-in-law and his mother-in-law had taken his wife to some other person, he became enraged with the former and had some words with him, and that at night he first of all struck the deceased, and next the witness No. 1 with a *lathee*, and then took away his wife, but after they had proceeded some distance together, he was obliged to leave her owing to her cries and entreaties.

* Wit. No. 8, Bunmally Mudduk.
" " 9, Degamber Pal.

Before the Magistrate, the prisoner admitted† having struck deceased with a bamboo but denied having *intended* to kill him. He further denied having struck the witness No. 1, and said that that portion

† Wit. No. 11, Dwarkanath Sircar Mokhtar.
" " 12, Brijomohun Paulit Mokhtar.

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of his Mofussil confession in which he had stated he had done so, and that he had subsequently taken away his wife was untrue, and had been extorted from him by threats on the part of the Police. He further stated that the deceased had given away his (prisoner's) wife in marriage to another person and had turned him (prisoner) out of doors, and also that he had beaten him on the 2nd Bysack or three days before the date of the alleged murder.

In this Court, the prisoner denies the charges on which he stands committed, and says that he did not make any admissions either before the Police or before the Magistrate. He calls no witnesses for his defence.

The Jury (Baboos Taruknath Mookerjee, Rakhal Dass Sircar and Rakhal Dass Chowdhoory) unanimously convict the prisoner on both counts of the indictment.

In this verdict I concur. The name of the prisoner was mentioned from the first, on the report of the occurrence which reached the thannah at noon the next day, as the person by whom deceased and witness No. 1, had been wounded, and setting aside the evidence of his wife which, though recorded, has not been taken into account by the Court in influencing its decision, I am of opinion that there is ample evidence to show that the prisoner was *beyond doubt* the person by whom the deceased and his wife were wounded. What the cause of the disagreement between them was, and what particular object the prisoner had in view when attacking them is not so clear, but the evidence seems to warrant the conclusion that there had been a quarrel between the parties about the prisoner's wife, and that it was the prisoner's object to remove her from the house of her parents, and that in the prosecution of that object, in itself not an illegal one, he committed the offences with which he stands charged. Whether the attack was a premeditated one, or whether the prisoner fancying that he was about to meet with opposition in carrying out his design on the spur of the moment seized the weapon, which happened to be lying at hand, and inflicted with it the fatal wounds, is not quite clear. The deposition given by the deceased before the Police (marked A) might indeed, at first sight, have warranted the conclusion that there had been an altercation between the deceased and the prisoner *immediately* previous to the attack, but his subsequent deposition (B) given before the Magistrate, corroborated as it is by the evidence of the witness No. 1, precludes the Court from adhering to such a supposition.

The time at night at which the attack was made, the weapon used in making it, and the repetition of the blows must be regarded as aggravating circumstances against the prisoner; but, on the other hand, the cause of quarrel between the parties appears to have been but a slight one, and there does not seem

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to have existed any previous enmity between them. The prisoner has, in my opinion, incurred the penalty of *death*, but regard being had to the absence of previous enmity, to the fact that there is on the record no sufficiently clear proof of the crime having been a *premeditated* one, and lastly, giving the prisoner the benefit of the supposition which I have raised above, that the crime might possibly have been committed on the spur of the moment, while he was in the act of endeavouring to compass the removal of his wife, and that he thought that he was about to be opposed, or perhaps actually was opposed in that act, I trust the superior Court may concur with me in thinking that the case is one in which the extreme sentence of the law may be remitted, and a sentence in lieu thereof, of transportation for life be substituted.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and H. V. Bayley.)

Mr. E. A. Samuells.—From the depositions of the deceased, the evidence of the prisoner's wife and the confessions of the prisoner before the Police and the Magistrate, both of which have every appearance of being genuine, I can entertain no doubt that the attack was made upon the deceased by the prisoner deliberately with a deadly weapon from motives of petty spite and with the full intention of causing death. It is true the prisoner denies this, and says that there was a quarrel between the deceased and himself, and that he struck him with a bamboo in his anger, but the latter statement is irreconcileable with the nature of the wound as well as with the evidence, and the former is directly contradicted by the evidence both of the wife and the deceased himself.

Under these circumstances, it appears to me, impossible to record any other sentence than one of death. I accordingly direct that the papers shall be laid before another Judge.

Mr. H. V. Bayley.—The medical evidence in this case clearly proves that the wounds on the head of the deceased caused his death; and that they might have been inflicted by the *kataree*, proved to have been in the house of deceased. The witnesses Nos. 1 and 2, (the latter the prisoner's wife) and the deceased all deposed to prisoner having attacked deceased, *when asleep*, with the *kataree*. The prisoner, in his confessions to the Police and Magistrate, admits having struck deceased on the head with a *lattee*. These confessions are denied at the Sessions, but are proved to have been voluntarily made. The causes of provocation alleged in them are that the deceased had beaten prisoner with a broom, and had given prisoner's wife (deceased's daughter) in a *sunga* marriage. But no attempt is made by prisoner to substantiate either of these pleas. I see no reason to distrust the truth of the depositions of the deceased to the Police and Magistrate, or of witness No. 1. The Sessions Judge

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justly remarks: "The time at night at which the attack was made, the weapon used in making it, and the repetition of the blows, must be regarded as aggravating circumstances." These, and the deceased being asleep, afford most strong presumption of a malicious design to kill. The Sessions Judge deems the facts of the quarrel being slight, of no previous enmity, and no sufficiently clear proof of the crime being premeditated, and possibly that the crime was committed on the spur of the moment, such as to justify the remission of a capital sentence. I regret I can see no ground to consider these reasons to outweigh the facts which the Judge himself terms aggravating, and which, together with that of deceased's being asleep, I consider admit of no presumption but a malicious design to kill. I concur with Mr. Samuells.

PRESENT:

G. LOCH, ESQ., *Officiating Judge.*

GOVERNMENT AND ANOTHER

versus

RAMKISTO GOWALA AND MANICKRAM MARWAREE.

West-Burdwan.

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Case of RAMKISTO GOWALA and another.

Held that the appropriation by the prisoner of a Bank Note found by him, the owner of which was, at the time of finding, unknown to him, was, in accordance with the ruling laid down by the English Courts in Thurburn's case, not a criminal offence

CRIME CHARGED.—No. 13, theft of a Bank note for Company's Rs 500, on the 23rd August, 1858, corresponding with 8th Bhadro, 1265; No. 14, 1st count, being accessary after the fact to the above theft; 2nd count, receiving the said property knowing it to have been stolen.

CRIME ESTABLISHED.—Knowingly retaining in their possession and applying to their own purposes the proceeds of a 500 rupees Bank note belonging to the prosecutor (which had been found by prisoner No. 13,) after the same had been publicly advertized for.

Committing Officer.—Mr. T. Bruce Lane, Assistant Joint-Magistrate of Raneegunge.

Tried before Mr. Pierce Tayler, Sessions Judge of West-Burdwan, on the 23rd March, 1859.

Remarks by the Sessions Judge.—The terms of the Court's decision in this case, drawn up under Act XXXIII. of 1854, were as follows.

The oral and documentary evidence for the prosecution, supported by the repeated confessions of the prisoners, and portions of their defence before this Court, clearly prove that the prosecutor on the 22nd of August, 1858, received a letter from Mr. J. F. Harrison, agent of the East India Coal Company, enclosing a Bank of Bengal note, for Rs. 500, No. 01646, for

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Colliery expences; that, having occasion to go to Raneegunge that day, he took the note with him, for the purpose of changing it; that he went to Mr. Rose's Hotel, and asked him whether he could change it; that, as Mr. Rose was not able to do so, he replaced the note in his pocket, and after remaining there about an hour longer, started to return home; that, after he had got out of the Raneegunge bazar, he had occasion to put his hand into his pocket, when he found that the Note was not there; that he immediately returned to the Hotel, and informed Mr. Rose of his loss, and had his compound searched; that not being able to find the Note he returned home, and the next morning informed the agent, Mr. Harrison, by Telegraph, of his loss and requested him to stop the note at the Bank of Bengal; that he also sent his peon, Ram Singh, *witness No.* 4, to the different money-changers in the bazar, with a note of the loss of the note, and offering 50 Rs reward for its recovery; that, the next day, he petitioned the Assistant Joint-Magistrate to have a drum beaten through the bazar, and the said offer of reward duly promulgated; that, some time afterwards, he received a letter from his Agent, enclosing one from the Bank of Bengal, which shewed that the lost note had been cashed there, by the Oriental Bank; that the Agent had written, upon the back of the said letter, that the note had been further traced to Manickram Marwaree of Raneegunge, prisoner No. 14; that on receiving the said communications, the prosecutor called upon the late Assistant Joint-Magistrate, and begged him to examine the said Manickram's books; that the said officer, accompanied by the prosecutor, Doollubh Singh Chuprassee, *witness No.* 1, and Ramreedoy Mujmooadar, the Moonshee of the Raneegunge Court (sent for and examined by this Court,) went to the prisoner Manickram's shop; that on his brother, who was there, saying that he had gone to another, he was searched for and found therein; that he was very unwilling to give up his books; that when he, at last did so, the lost note was found entered in one of them; that he then orally confessed having received it from the prisoner No. 13, and agreed to buy cloth therewith, and halve the profits with him; that the prisoner Ramkishto was then apprehended, and at once confessed having found the Note *in the hotel compound*, near the boundary thereof; and made the above arrangement with the Marwaree; that the latter subsequently paid back the amount of the lost Note, by the late Assistant Joint-Magistrate's permission; that the prosecutor was allowed to have it, on asking for it verbally, upon the written security of Mr. C. Rose, the proprietor of the Raneegunge Hotel, which is the only record of that part of the case discoverable; and that the Note was paid by the prisoner No. 14 to Madhubchunder Roodro (sent for and examined with his books by this Court,) who was

of which the prisoner could be convicted.

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the manager of the *kothee*, or house of business, of the late Kissenmohun Singh, in Calcutta. In his Mofussil confession, the prisoner No. 13 alleged, that he had not told No. 14 where he found the note, and the latter, in his confession taken at the same time, acknowledged that he had not yet given No. 13 any part of the value, or profits thereof. Both prisoners also affirmed, that they were ignorant of the note having been advertized for.

The prisoner's No. 13's confession, before the late Assistant Joint-Magistrate, was nearly the same as his first. That of the prisoner No. 14 added, to his former statements, that, in consequence of No. 13 not having demanded change for the note at once, he conceived it to have been obtained by theft, or dacoity, and that there could be no harm in taking it (on the terms proposed) because he could be able to pay back the money, if called upon to do so at any future time.

The defence of the prisoner No. 14, before the Sessions Court, though nearly the same as his confession in the Mofussil in all main particulars further alleges, that he thought the note might be prisoner No. 13's own property, because he was a butter vender, and could have saved as much as 500 Rs. He also omits all about his having suspected the said note to be stolen property.

The defence of the prisoner No. 13 is also in the main, similar to his confession, but he further declares, that he never gave the note to the Marwaree, but only told him to trade upon it.

The prisoner No. 13 named no witnesses, and certain Marwarees adduced by No. 14, though they gave him a good character and affirm that they were not aware of the note having been advertized for, say nothing that can exculpate him.

The *futwa* of the Law Officer convicts both prisoners, *bu-zun-i-ghalib*, or on violent presumption, of knowingly failing to restore *lookta* (or lost property) after the same had been publicly advertized for, and declares them liable to *tazeer*, or discretionary punishment.

This *futwa* is of the same nature as that passed in the case of Chundoo *versus* Sheikh Roopun and others, decided by the Nizamut Adawlut on the 15th of May, 1815, in which the prisoners were acquitted, in consequence of the evidence against them not being considered sufficient.

On searching for other precedents, I find that of Govnerment *versus* Mungola Raur, decided by the Nizamut Adawlut on the 29th of March, 1852, in which the prisoner was sentenced to one year's imprisonment, with labor suited to her sex, for taking jewels from a corpse, and appropriating them, and thereafter endeavouring to hide the body.

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There is also a case, viz. Government and Tarucknath Ghose *versus* Nuzzur Allee, decided by the same Court on the 22nd of August, 1857, in which the prisoner was acquitted, on the main grounds, that there was no good evidence of the theft charged against him, and that, "if he found the lost note not knowing who was the owner and changed it, before the owner came forward to claim it, no felony had been committed by him."

On referring to Archbold's pleadings and evidence, third edition, pages 131 and 132, I find the above ruling of English Law* near the bottom of the former (3rd inst. 108, 1 Hawk. C 33, S 2) but at foot of the said page, and at the top of the next, another ruling of the said Law, to the effect that, "if a hackney Coachman convert to his own use, a parcel left by a passenger in his coach by mistake it is a felony, if he know the owner, or if he took him up, or set him down, at any particular place, *where he might have enquired for him* (R. V. Wyune, 2 East, 664 and others)."

* With the addition of "conversion to own use."

On consideration of all these direct and analogical precedents in connection with the facts that the prisoner No. 13, ought clearly to have enquired for the owner of the prosecutor's note, at Mr. Rose's Hotel, after he had found it within the compound thereof, and that the prisoner, No. 14, must evidently, have either refused to negotiate it, unless he got a moiety of its value, because he knew it to have been found under the above circumstances, or demanded that extravagant consideration, because he suspected the said note to be stolen property, as he stated in his confession to the late Assistant Joint-Magistrate, and as it is impossible to believe that either prisoner was unaware of the same having been advertized for, I consider the prisoners jointly guilty of a grave and legally punishable offence and, therefore, generally concurring in the *futwa* of the Law Officer, convict them both of "knowingly retaining in their possession, and applying to their own purposes, the proceeds of a 500 Rupees Bank note, belonging to the prosecutor (which had been found by the prisoner No. 13,) after the same had been publicly advertized for" and sentence them as under.

Prisoner No. 13, Ramkisto Gowala, to two years' imprisonment without irons, and in the event of 50 Rupees fine not being paid at any time before his sentence may expire, to labour during the period thereof.

Prisoner No. 14, Manickram Marwaree to three years without ditto, and in the event of 200 Rupees fine not being paid, at any time before his sentence may expire, to ditto, during the period thereof.

I pass the above sentences on the grounds that the offence committed is, clearly, punishable under the Mahomedan Law, as set forth in the *futwa* of the Law Officer; that there can be

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no doubt of the injury likely to accrue to society from non-punishment thereof, while the analogies of English law go far to shew, that it would have been considered a very grave offence indeed, under the peculiar circumstances above detailed in the courts of the mother country.

I have punished the Marwaree, prisoner No. 14, more severely than No. 13, because being a better instructed man, he ought to have advised the latter to enquire for the owner of the note at the hotel, when first he came to him with it, or at any rate, to have given up the amount in conjunction with him as soon as he became aware that it had been advertized for.

I have not punished either prisoner more severely, because the 500 Rupees lost by the prosecutor have been repaid.

The usual warrant will at once issue, and the Joint Magistrate of Bancoorah will be directed to restore the *khata* books of the prisoner, No. 14, to the receipt of his brother, or any other agent he may appoint. Those of the witness Madhubchunder Rodroo were given back to him by this Court. The record will be returned as soon as practicable, and the present Assistant Joint-Magistrate of Raneegunge will be directed to cancel the security given by Mr. Rose, for Mr. Staig, in the matter of the repayment of the value of his note. In this Court's separate proceeding to that effect, the said officer will be warned that such proceedings ought always to be recorded in like cases with the utmost care.

Remarks by the Nizamut Adawlut.—(Present: G. Loch, Esq. Officiating Judge.) The prisoner No. 13, is charged with the theft of a Bank note for Co.'s Rs. 500 on 23rd August, 1858. The prisoner No. 14, is charged first, with being accessary after the fact to the above theft and secondly, with receiving the said property knowing it to be stolen. The prisoners were convicted by the Sessions Judge of knowingly retaining in their possession and applying to their own purposes the proceeds of a Bank note for Rs. 500, belonging to the prosecutor, (which had been found by the prisoner No. 13,) after the same had been publicly advertized for.

It appears that the prosecutor, a servant of the E. I. Coal Company, received a Bank note for Rs. 500, No. 01646, from Mr. Harrison the agent of the Company. He took it among other places to Rose's Hotel at Raneegunge, in order to get it changed but was unsuccessful; after leaving the Raneegunge bazar he missed the note and immediately went back to the hotel, had the compound searched, but not finding the note informed his master the next morning by Electric Telegraph of the loss and begged him to stop the note in Calcutta. He also sent to the different money-dealers in the Raneegunge bazar and offered a reward of Rs. 50, for the missing note and also petitioned the Assistant Magistrate to have proclamation

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of his loss made by beat of drum through the bazar with the offer of the above reward, which was done. Some time after he received a letter from his agent informing him, that the note had been stopped at the Bank of Bengal and had been traced to Manickram Marwaree of Raneegunge, prisoner No. 14. He applied to the Assistant Magistrate to have Manickram's books examined and an entry of the lost note was found in them, and Manickram stated that he had received the note from Ramkisto Gowala prisoner No. 13, and they had agreed that he Manickram should purchase cloth and the two should share the profits. Ramkisto on being apprehended, confessed to having found the note and to the arrangement made with Manickram. The prisoners with the permission of the Assistant Magistrate then refunded the sum of Rs. 500 to the prosecutor.

When first examined by the police and Assistant Magistrate, Ramkisto stated that he had found the two halves of the note outside the hotel compound on the road to the north, and after keeping it for some days he shewed it to Manickram, but did not tell him that he had found it, nor did Manickram ask him any questions about it. On 2nd or 3rd Kartik he made over the note to Manickram, the parties having agreed that Manickram should purchase cloth and share the profits with Ramkisto, and he added that he was not aware of the proclamation. Manickram, as stated above, admitted that he had received the note from Ramkisto and also stated that he knew nothing of the proclamation. They repeated these statements with little variation throughout. It is questionable from Ramkisto's defence on the trial, whether he meant to say that he picked up the note inside or outside of the hotel compound.

I do not think the conviction in this case can be upheld. It is not of material consequence whether the Bank Note were found within or without the Hotel premises at Raneegunge. What has to be looked to is the intention at the time of the party finding it. The leading case reported among the English trials is that of Thurburn (see Roscoe's Law of Evidence of 1857, page 581, Head, Larceny) which is very similar to the present case. The prisoner found "a bank note, which had been accidentally dropped on the high road. There was no name or mark on it indicating who was the owner, nor were there any circumstances attending the finding of it which would enable him to discover to whom the note belonged where he picked it up: nor had he any reason to know that the owner knew where to find it again. The prisoner *meant to appropriate it* to his own use when he picked it up. The day after, *and before he had disposed of it,* he was informed that the prosecutor was the owner and had dropped it accidentally; he then changed it and appropriated the money to his own use. The Jury found that he had reason to believe and did believe it to

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be the prosecutor's property before he changed the note and the prisoner was convicted." The case was reserved for the opinion of the Court of criminal appeal and that Court "held that the conviction was wrong." In delivering judgment B. Parke explained that "in order to constitute the crime of larceny there must be a taking of the chattel of another *animo furandi* and against the will of the owner. By the term *animo furandi* is to be understood the intention to take not a particular temporary, but an entire dominion over the chattel without a colour of right. As too the rule of law founded on justice and reason is that '*actus non facit reum nisi mens sit rea,*' the guilt of the accused must depend on the circumstances as they appear to him; and the crime of larceny cannot be committed unless the goods taken, appear to have an owner and the party taking must know or believe that the taking is against the will of that owner." He further goes on to say that "the result of these authorities is, that the rule of law on this subject seems to be, that if a man find goods that have been actually lost or are reasonably supposed by him to have been lost, and appropriates them with intent to take entire dominion over them, really believing when he takes them that the owner cannot be found, is not larceny. But if he takes with the like intent, though lost or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny." The whole judgment is too long to be quoted in this place, but I make a further extract in which the learned Judge applied the above reasoning to the case before him. "To apply these rules to the present case the first taking did not amount to larceny, because the note was really lost and there was no mark on it or other circumstances to indicate *then*, who was the owner or that he might be found, nor any evidence to rebut the presumption that would arise from the finding of the note as proved, and he believed the owner could not be found and therefore the original taking was not felonious; and if the prisoner had changed the note, or otherwise disposed of it before notice of the title of the real owner, he clearly would not have been punishable; but after the prisoner was in possession of the note the owner became known to him, and he then appropriated it *animo furandi* and the point to be decided is, whether that was a felony. Upon this question, we have felt considerable doubt. If he had taken the chattel innocently and afterwards appropriated it without knowledge of the ownership, it would not have been larceny; nor would it, we think, if he had done so knowing who was the owner, for he had the lawful possession in both cases, and the conversion would not have been a trespass in either. But here the original taking was not innocent in one sense and the question is, does that make a difference? We think not: it was dispunishable as we have already decided

and though the possession was accompanied by a dishonest intent, it was still a lawful possession and good against all but the real owner and the subsequent conversion was not, therefore, a trespass in this case more than the other, and consequently no larceny." In the case of Preston also reported at page 582 of Roscoe's work it was held "That the Jury are not to be directed to consider at what time the prisoner after taking the lost bank note into his possession resolved to appropriate it to his own use, but whether at the time he took possession of it he knew or had the means of knowing whether who the owner was and took possession of the note with intent to steal it; for if his original possession of it was innocent, no subsequent change of his mind or resolution to appropriate it to his own use would amount to larceny," and again in Dixon's case reported at page 583 of the same work. "Where the Jury found that the notes were lost, that the prisoner did not know the owner, but that it was probable that he could have traced him, it was held that the prisoner was not bound to do that and that he had been wrongfully convicted of stealing the note."

Now, applying the law as thus laid down to the present case, it is evident that under the circumstances in which he found and disposed of the bank note, the prisoner Ramkisto could not be convicted of larceny, for at the time of appropriation he appears to have looked upon the note as lost property, and there is nothing to shew that there was any mark upon it whereby the owner might have been traced, or even when he disposed of it to Manickram that he knew the prosecutor to be the real owner, though, even if he had, such knowledge would not under the ruling above quoted have rendered him guilty of larceny; and therefore the knowingly retaining and applying to his own purpose the proceeds of the note, of which Ramkisto as well as the other prisoner Manickram has been found guilty, without any felonious intent being proved against either, do not constitute a legal ground of conviction. Two cases somewhat similar to the present were decided by this Court on 22nd August, 1857, Volume II. page 161, and March 7th, 1859, page 37 in which the prisoners were acquitted. In this case also they must be released.

PRESENT:

E. A. SAMUELLS, Esq., *Judge* AND H. V. BAYLEY, Esq., *Officiating Judge.*

GOVERNMENT

versus

KHUNJONEE AURUT (No. 4,) AND ALUMDEE MUNDUL (No. 5.)

Rajshahye.

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Case of KHUNJONEE AURUT and another.

Where the Sessions Judge while admitting that it was not easy to discover any extenuating circumstances in the deliberate murder of which the prisoner was convicted, recommended a remission of capital punishment on the ground of prisoner's sex, of the irritability caused by her recent confinement and the absence of previous malice, the Court held these grounds to be insufficient and passed a capital sentence. Prisoner's husband who had buried the body of deceased

CRIME CHARGED.—No. 4, wilful murder of Goonabee Aurut and No. 5, 1st count, accessaryship after the fact; 2nd count, privity.

Committing Officer.—Mr T. Bruce Lane, Officiating Magistrate of Rajshahye.

Tried before Mr. L. S. Jackson, Sessions Judge of Rajshahye, on the 8th June, 1859.

Remarks by the Sessions Judge.—The facts are simple and unfortunately admit of no doubt as to the commission of the crime laid to the prisoner's charge.

Two brothers Alumdee, prisoner No. 5, and Kulumdee the prosecutor, lived together at Bulaipara, with their respective wives, Khunjonee (prisoner No. 4) and Goonabee, the deceased woman. Khunjonee is near middle age and was delivered of a child in the month of Falgoon last, while Goonabee appears to have been a much younger person and had been married just a year.

It does not appear that the two women were on bad terms, nor is it in evidence that Khunjonee had any particular cause of enmity against her sister-in-law, for although questions were put by the Government pleader with the view of eliciting the fact of an intrigue between Khunjonee and her husband's younger brother, the prosecutor, and although the replies to those questions were not perfectly satisfactory; yet, there is no proof whatever of the fact and even if the fact were true and known to the young wife, it would furnish ground of ill-will, on her part rather than on that of the offender.

It appears from the evidence of Jhara Bewah, witness No. 10, who, as the widow of a deceased uncle, lived in the same enclosure as the brothers, that one forenoon in Chyt last, the same day on which Goonabee died, the witness heard a violent altercation between the two women, and going to find out the cause discovered that Khunjonee complained of the curry which Goonabee had cooked, as not containing a sufficiency of gravy. She represented that she would be unable to suckle her infant, if she had not food suited to her present condition. Jhara very sensibly advised her to eat what was ready, and

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suggested that next day each should cook for herself. She then went back to her own hut. This occurred between one and two *prohurs* of the day and the next thing she heard was (in the afternoon) that Goonabee was dead. She saw the body late in the afternoon, but gives no detail on that point worth specifying.

About two and half *prohurs* of the same day, it happened that Anardee Mundul* an uncle of Alumdee, was passing by the house where the latter lived, on the way to look after his cows and Bheem Puramanick† who was going to cut mulberry leaves was in his company. As they passed the premises, they heard a groan proceeding from a hut opening to the East, which belonged to Kulumdee. They determined to ascertain what was passing, and entering the premises, and lifting the "*surkee*," (or screen) saw to their astonishment, Goonabee lying on her back, head to the North, Khunjonee with her left knee pressing on her chest or abdomen and clutching her throat with both hands. The exclamations of the two men caused Khunjonee to let go her hold and start up. They saw from the absence of movement, that Goonabee's life was extinct.

* Witness No. 1.

† Witness No. 2.

Very much alarmed at what they had seen, they withdrew from the house, but meeting Alumdee in the lane, and being questioned by him on his seeing their agitation, they told him what had happened. He embraced their feet and urged them to tell no one. I need hardly observe that such reticence is precisely the line of conduct which recommends itself to a Bengali under similar circumstances. They accordingly went out of the way for two or three days; it was given out that Goonabee had died of cholera, and at first the crime appeared likely to go unpunished.

For Kulumdee, the prosecutor, who had parted from his wife at night, (when he left her, as he says quite well) and had gone out early in the morning to labour, on coming home it would seem very shortly after the occurrences which I have described, was met by his brother with the news that his wife had died of cholera. He went in and looked at the body which he found lying in the same position as described by the witnesses Nos. 1 and 2. He observed that some feces had been emitted and that something like saliva had come from the mouth of deceased, moistening the cloth which covered it. He says that he made no further examination, and that he saw no marks of violence upon her person. It is difficult to believe this statement, but the deponent is not apparently a person of much intelligence, and however this may be, it seems probable enough that he was really ignorant of the actual state of the case until he

and had not informed against his wife was acquitted of accessaryship after the fact, as it was not certain that he was cognizant of the crime, and both knowledge of the felony and assistance to the felon to enable her to escape the pursuit of justice are necessary to establish accessaryship. Parole evidence ought not to be taken to the contents of *soorutthals* or confessions, where the records themselves exist, but only to the genuineness of the record.

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was informed of it by Bheem Puramanick (witness No. 2,) which he says occurred on the third day after Goonabee's death; during this time he had been wandering about he says like a madman, unsettled by the sudden catastrophe. Kulumdee further states that on taxing Khunjonee with what she had done she at first denied it, but on being told that he had his information from an eye-witness, she proposed to him to say that Goonabee had hanged herself, and offered to arrange a second marriage for him.

The Darogah, Kaleechunder Bhya, witness No. 6, being apprised of the circumstances, as stated by the Magistrate, arrived on the spot on the 26th March, four days after the murder. He proceeded to investigate the case and while he was hearing the statement of Jhara Bewah, the first witness mentioned in this letter, Khunjonee fainted and remained unconscious for some time. I do not attach very great importance to this fact, as it might so happen with an innocent person upon hearing for the first time evidence so criminating.

The body of Goonabee was of course exhumed and sent in to the sudder station, where it was examined without loss of time by the Civil Assistant Surgeon, Mr. White, witness No. 5. The testimony which this gentleman gives is most important, it effectually disposes of the suggestion of cholera and proves that the woman died of suffocation, which the witness observes would be brought about by force, applied precisely in the manner described by the other witnesses. He also mentions a grave suspicion founded on the appearance of the stomach and intestines, that an attempt at poison had been previously made by the use probably of a substance at once irritant and sedative. He states, however, that these organs were submitted to the usual tests, and that no actual trace of poison was discovered, but that a vegetable poison might have been used which would escape detection.

The Mofussil *sooruthal* was not proved, the witnesses to it being unable to read and write, and having denied that it was read over to them on completion.

Against the prisoner Alumdee, it was shown that he had notice from Anardee and Bheem of what had just taken place in his house, that notwithstanding he assisted in concealing the perpetration of the crime, and promoted the burying of the body, thus making himself an incidental accessary to the murder after the fact. He indeed admits this degree of criminality in his examination before the Darogah and also, in that before the Magistrate, which has been recorded and proved as a confession.

This was the case against the prisoners. Khunjonee's defence was simply denial. She declared that she had been out of doors when Goonabee died and that the exhumation of the body four days after, was the result of a conspiracy against her,

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although she could point to no one as either likely to injure her, or having an interest in doing so. She called as witnesses, one little girl apparently under seven years of age, who appearing to be incapable of giving evidence, was not examined and a woman named Doola, who denied all knowledge of the circumstances and stated that she had been away from home at a distance of two *prohurs* journey for some days before the murder. Alumdee simply denies the charge but calls no witnesses.

The Jury* with whose assistance the case was tried, unanimously convict Khunjonee, but declare Alumdee blameless. In this verdict as to the female prisoner, I quite concur. It is impossible I think that there can be any question of her guilt. The facts of the case are somewhat unusual, but very simple. They are not improbable and there is no ground either suggested or conceivable for supposing them to have been invented, and moreover, they tally so closely with the medical evidence as to forbid suspicion.

* Hurrishchunder Sircar.
Hurrypersaud Sandyal.
Nizabuttoollah.

It does not appear that the husband of the murdered woman became aware of the real facts until a day before the arrival of the Police, and under all the circumstances, it is not surprising that he should have so long delayed to prosecute.

In regard to Alumdee, I am compelled to dissent from the verdict of the jury, as under the circumstances detailed, it seems clear that he has legally incurred the guilt of an accessary in having concealed the crime of his wife, and misrepresented the facts of the case, with a view to prevent her being brought to trial, though undoubtedly, there is much to be said in mitigation of his conduct which seems only just within the limits of the law.

It remains for me to state the sentence which I would propose to pass upon Khunjonee. It is not easy to point to any particular circumstance which renders her an object of mercy, for the act must have been as determined a murder as ever was committed. But regard being had to the absence of previous malice to the sex, and peculiar condition of the criminal which probably made her extremely irritable, I should be on the whole disposed to recommend a sentence of transportation for life. It is right to observe that the conjecture of the Civil Assistant Surgeon as to the use of poison, though doubtless founded upon good medical reasons, is unsupported by any direct evidence of the finding or purchase of any poisonous substance, or of the deceased having suffered while alive from any of the symptoms of poisoning. If any such thing had

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been proved, the complexion of the case would of course have been considerably worse even than it is at present.

I have recorded against Alumdee, a sentence of one year's imprisonment with labor which, however, will not be carried into effect until the proceedings have been revised by the Nizamut Adawlut.

In reference to the concluding part of the Magistrate's observations, upon the proceedings of the Darogah, I do not feel that I am called upon to express any opinion. Where irregularities or important omissions on the part of the police are apparent at the trial, having escaped the observation of the Magistrate, or not having been sufficiently considered by him, it is, I apprehend, the duty of the Sessions Judge to animadvert upon them and, if necessary, to bring them to the notice of the Commissioner, but where the Magistrate has himself perceived, and is prepared to deal with, the neglect of duty, I see no necessity for interference on the Judge's part.

I have already noted the failure of the *sooruthal* and I have repeatedly had to remark upon the same shortcoming. It seems as well here to mention a mistake made by the Magistrate in this case, as it has been in others by his predecessors. In examining witnesses to the *sooruthal* instead of looking to the attestation of that document, the Magistrates are in the habit of questioning the witnesses as to what they saw on the occasion of the inquest. Now, it seems obvious to me, that the essence of a *sooruthal* is its being the intelligent and full record of what has transpired at an inquest, set down by an officer who is or should be experienced in such matters and understanding what is material, and what is otherwise. This record made on the spot at the time, and assented to by the subscribing witnesses, forms a permanent history of the circumstances which cannot vary and which can be relied on by the Court. Whereas to substitute for the written record, the random recollections of the witnesses, is to substitute danger for safety, uncertainty for certanty, I should therefore be glad to see the police stimulated to greater care in the legal preparation of these documents, and the Magistrates advised to pay attention to their proper attestation.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and H. V. Bayley)

Mr. E. A. Samuells.—The evidence of the two eye-witnesses in this case, Anardee Mundul and Bheem Puramanik, appears to be free from suspicion and is corroborated by the evidence of the Civil Surgeon and the admissions of the prisoner, Alumdee, in the Magistrate's Court.

The motive for the murder is not clear, but there appears reason to suppose that the prisoner, Khunjonee, had an intrigue with the husband of the deceased, and this connection may have

furnished inducements to Khunjonee to get the deceased, who was a much younger woman than herself, out of the way.

It is difficult to conceive a more deliberate murder, or one more entirely devoid of extenuating circumstances. I therefore propose to convict Khunjonee of wilful murder and to sentence her capitally.

The Sessions Judge convicts Khunjonee's husband, Alumdee, of being an accessary after the fact; because, hearing of the murder after it had been committed, he buried the body and did not inform against his wife. It may be doubted however whether this is sufficient to constitute accessaryship. Full knowledge of the felony and personal assistance to the criminal are both essential. Now in this case there were very trifling marks of external violence. The prisoner, Alumdee, had no personal knowledge of the crime, and may naturally have been unwilling to credit the accusations he had heard against his wife. I would therefore acquit Alumdee and direct his discharge.

I concur in the Sessions Judge's remarks on the subject of the evidence to *sooruthals*. I have remarked the same irregularity in the case of confessions: witnesses being questioned as to their recollection of the statements made by the confessing-prisoner, instead of simply proving the record of the confession, and very recently we had a case in which witnesses were examined as to the contents of a dying declaration. Magistrates ought to be aware that parole evidence of what a witness or a prisoner said is not admissible when they have before them the actual record of his statement, attested by the proper officer.

Mr. H. V. Bayley.—I see no reason to distrust the evidence of Alaboodeen and Bheem Puramanick, the eye-witnesses. It is to some extent supported by the statement of Alumdee but essentially and without possibility of collusion by that of the Civil Surgeon, Dr. White. This witness entirely refutes the plea of cholora having been the cause of death.

As then this evidence is trustworthy, it proves clearly a deliberate murder by strangulation.

The fact of the prisoner's condition, i. e., having had a child about a month before, and of there being no clear evidence of previous enmity are stated by the Sessions Judge as grounds for not passing a capital sentence. But I regret I cannot concur in this view. I think a capital sentence should be passed under the circumstances on record in this case.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge.*

GOVERNMENT

versus

GOREEB PEADAH.

Rajshahye.

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The Magistrate having committed the prisoner for perjury on the ground of one of his statements being contradictory of another, the judge quashed the commitment and directed the Magistrate to charge the prisoner with perjury in having falsely stated that a darogah and a burkundaz, defendants in the case in which prisoner had been Plaintiff, had extorted money from him. The Magistrate accordingly took the evidence of the darogah and burkundaz, and on this evidence alone committed the prisoner for

CRIME CHARGED.—Wilful and corrupt perjury in having on the 29th of March, 1859, deposed under a solemn declaration taken instead of an oath before Mr. T. B. Lane, Assistant Magistrate of Rajshahye, that "the said Burkundauz began "to beat us and said, Give me your 'guard *salaamee*' money if "you do not now give me 12 Rupees I will beat you and wound "you. Therefore, being unable to bear the torture of the "beating, *we gave the burkundaz 4 Rupees which I had with me.* "He became very enraged and refrained from beating us only, "on our promising to give him 5 Rupees more from home the "next day. Early next day Kodaee Sheikh's nephew having "come to Mohunpore to look for his uncle, we called him "through the Burkundauz to the guard house, and Kodaee "asked him whether he had brought anything. His nephew, "Shabul Mundul, replied that he had brought 5 Rupees and "*after Kedaee had taken 5 Rupees and given it to the Burkundauz,* the darogah sent for us and said, &c.; and further the "darogah enquired how much money was there, and Meheroolla "Burkundauz replied, There are 100 Rupees. On his saying "this, the darogah took the money from me and putting it "under a large pillow which was on the bed he was sitting "on, replaced the pillow, and remained sitting there;" such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Wilful and corrupt perjury.

Committing Officer.—Mr. T. B. Lane, Officiating Magistrate of Rajshahye.

Tried before Mr. L. S. Jackson, Sessions Judge of Rajshahye, on the 7th May, 1859.

Remarks by the Sessions Judge.—The prisoner with another, made a complaint against a police darogah to the effect, that after taking him up on a charge of felony, searching his house and carrying away some portion of his property, the darogah had extorted a sum of money, 100 Rupees, from the two men, and then released them.

The Magistrate having enquired into the charge found it to be perfectly false and malicious, punished one of the complainants summarily under Regulation VII. of 1811, and committed the other for trial on the charge of wilful perjury, under the Circular

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perjury, and the judge convicted him. Held that the judge ought not to have directed the Magistrate to commit on a charge quite distinct from that originally contained in the calendar and with regard to which no evidence had then been taken. Held also that the prisoner could not be convicted of perjury, merely on the evidence of the men he had accused, unsupported by any corroborative testimony.

Order No. 126, dated 18th June, 1841, on the ground of certain contradictory statements made on cross-examination.

On perusal of the calendar, I was of opinion that the contradictions alleged were rather in the nature of prevarications; that they were not, if proved, likely to sustain a charge of perjury; and that in the circumstances of the case it would be the fairest for all parties, if the prisoner were committed for substantive perjury upon his whole information, the truth of which might be disproved by the evidence of the police officers and others. I therefore cancelled the commitment, and directed the Magistrate to commit afresh in the manner indicated. I intimated also, that he would be at liberty, if he chose, to add a count for perjury under the Circular Order.

The Magistrate has accordingly committed, presenting the entire information as false; and the darogah and a Burkundauz Meheroolla, have in my judgment, well substantiated the utter falsehood of the statement which prisoner made before the Magistrate, and which statement has been proved in the usual manner.

The evidence of the darogah in particular is, in my mind, perfectly conclusive. He is an officer of high personal character having attained the second grade, has been educated at the Dacca college, and deposes in a manner which convinces me that the charge against him was wholly unfounded.

The prisoner has called further evidence in support of his original statement, but these witnesses are people of no character, and their testimony is by no means satisfactory. The circumstances of the alleged act of extortion are, moreover, by no means probable, and the accusation seems to have been made from a purely vindictive feeling.

It was quite voluntary, and was preferred to the Magistrate direct.

I have, therefore, had no hesitation in concurring with the respectable jury who assisted me in trying the case, and have convicted the prisoner accordingly.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The prisoner was apprehended by the darogah on a charge of theft and his house was searched. He subsequently, charged the darogah and a burkundauz, of the name of Meheroolla, with having extorted 100 Rupees from him as the price of his release. The Magistrate considered this complaint to be false, chiefly, apparently, on the ground of the contradictory statements of the complainant, and, these statements having been given on oath, he committed the complainant for perjury, tendering the contradictions in proof of the charge. The judge considering that the contradictory statements were mere prevarications and did not amount to perjury, cancelled the commitment and

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directed the Magistrate to commit the prisoner for perjury on his whole charge against the darogah.

The only evidence against the prisoner is that of the darogah and the burkundauz whom he had accused. Their statements were susceptible of corroboration on many points, but none was tendered. The Judge was satisfied, from the manner in which he gave his deposition and from his high character, that the darogah's denial of the charge was to be relied on and he, therefore, convicted the prisoner and sentenced him to seven years' imprisonment.

The judge ought not, I think, to have directed the Magistrate to commit the prisoner on what was, in fact, a totally different charge from that which the Magistrate's calendar originally contained. The truth or falsehood of the prisoner's complaint against the darogah was not in issue in the first commitment, and there does not appear to have been any evidence of the falsehood of this complaint on the record, which could justify the Judge in assigning perjury to it and ordering the prisoner's commitment on that ground.

The conviction, which is founded simply on the oath of the persons accused by the prisoner, cannot stand. If I were to affirm such a conviction, no person bringing a charge against a darogah who happened to enjoy the good opinion of the Judge and Magistrate of the district would be safe. Perjury is not to be assumed because the story of one man appears to be more credible than that of another. There must be certain proof adduced, independent of the oath of one of the parties, that the deposition of the other is false. The sentence of the lower Court is annulled and the prisoner will be released.

PRESENT:

E. A. SAMUELLS, Esq., *Judge.*

GOVERNMENT AND SREEMUTTY MOTO BEBEE

versus

JADOORAM (No. 6,) SREEMUTTY JULLEE (No. 7,) SHAMMUD ALI (No. 8,) AND PETUN (No. 9.)

Chittagong.

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In a case in which 3 out of 4 prisoners had confessed, the whole were acquitted, the evidence adduced in corroboration of the confessions being eminently unsatisfactory and there appearing to be strong grounds for suspecting that the confessions had been extorted by the Police and that the prisoners had been induced by fear to adhere to them before the Joint-Magistrate.

CRIME CHARGED.—1st count, Nos. 6, 8 and 9, burglary and theft in the house of the plaintiff of property to the amount of Rupees 117-13, and wounding the plaintiff by burning; 2nd count, Nos. 6 to 9, knowingly having in their possession property obtained by the above burglary; 3rd count, No. 7, being an accessary before and after the fact.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Chittagong.

Tried before Mr. E. Radcliffe, Additional Sessions Judge of Chittagong, on the 25th April, 1859.

The prosecutrix declares that on a Sunday night in the month of Falgoon, her house, was burglariously entered, and property to the value of Rs. 117-13 carried off; that of the thieves she recognised prisoner No. 6, who took from her person a silver necklace and four or five bracelets; that on the thieves laying hold of her she cried out and in scuffle the light was extinguished, when one of them went to the house of prisoner No. 7, who was a relative but at variance with her, and got from thence a light; that they then set fire to some bamboo shavings and burnt her on the face, elbow and other parts and cut her with a knife to induce her to show the property. On failing they dug up the whole floor under her bed, discovered four pots, one containing 50 Rupees, another twenty Sicca Rupees and twenty Arcot Rupees, a third 14 belonging to witness No. 19, and a fourth, a quantity of Cowrees: they likewise carried off a mat, some cloth and *dhooty*, a silk pocket handkerchief, &c., &c.; that in the morning Taiboolah and witness No. 20 came and found her insensible; being therefore unable to accompany them to the thannah, she went the succeeding day and deposed to much the same story, to which she adhered before the Magistrate.

The prosecutrix being a low woman there are no witnesses to the fact. Witnesses Nos. 2 and 3, being relatives of prisoner No. 7, and who appear to have been laid hold of by the Police, are decidedly unwilling witnesses, and their evidence in favor of the prisoners Nos. 6 and 7, must be accepted with caution. The Mofussil confession of prisoner No. 8 is proved to have been voluntary by the evidence of witnesses Nos. 6, 7, 8, and

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the confession of prisoners Nos. 6, 7 and 8, in the presence of the Joint-Magistrate, in the absence of the Magistrate, are proved to have been in every respect voluntary; that even if the prisoners Nos. 6 and 7, had been maltreated by the Police, as attempted to be proved by witnesses Nos. 2 and 3, there is *no doubt in my mind* that the Foujdary confessions of the prisoners Nos. 6, 7 and 8, were their spontaneous acts, being then under no apprehension, feeling convinced that if they had suffered at the hands of the Police the indignities they are said to have done, they would have declared the same to the Joint-Magistrate, who, in a conference, has informed that the prisoners had every opportunity of retracting, if they thought proper.

Witnesses Nos. 4, 5, 17 and 18 before the Magistrate identify the necklace, the bracelets and the silk pocket handkerchief. Witness No. 4 here identifies them as the property of the prosecutrix. Witness No. 5 is absent, and although sent for through the Magistrate, has not been found. No. 17 was committed for perjury on the 19th instant, having declared on solemn affirmation taken instead of an oath, that he did not recognise the property. Witness No. 18 although not positively identifying the articles as the property of the prosecutrix, swore that she said the property was her own, and that if she recovered the whole, she would take these ornaments as a part, meaning by that, that the necklace, &c., was her property, but as there was not much found, that she hoped the Police would exert themselves to recover the rest of the stolen property; regarding the identity of the property, I request the attention of the Sudder Court to the Magistrate's abstract of the examination, wherein it would seem that no reasonable doubt regarding the identity of the property need be entertained, the ordeal to which he had put the prosecutor and prisoner No. 7 being most satisfactory to the ends of justice.

Witness No. 19 lives in the same house as prisoner No. 7 who is her aunt by marriage and saw her give a light to a man on the night of the burglary; heard the prosecutrix's cries two or three times, but prisoner No. 7 would not permit her to answer; witness further declares that her fourteen Sicca Rupees had been carried off by the thieves; on cross-examination this witness deposed that bad feeling existed between the prosecutrix and prisoner No. 7; that although the prisoner did not show her any part of the stolen property, she got the necklace, &c. the property of prosecutrix, as her share of hush money.

Witness No. 20, on account of whose absence this trial was postponed from the 20th till 25th April, 1859, saw the prosecutrix the next morning; found her person burnt and cut as if with a sharp instrument; saw the hole by which the burglarious entry was made, and the senseless state in which the old woman was lying; said that she recognised prisoner No. 6, that prisoner

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No. 7 having absconded was apprehended by him on the Wednesday, and in the Mofussil he deposed that he believes from the bad feeling that existed between her and the prosecutrix, she colluded with the prisoners and others to rob the unfortunate woman; he also identifies the property found, but as he did not mention this circumstance before, I place but little reliance on this part of his testimony.

Doctor Beatson reports twelve days after the robbery, that the prosecutrix had several marks of healed abrasions on the right arm and chest which may have been burns or scratches.

All the prisoners plead *not guilty*, and in his defence prisoner No. 6 declares that he was at the marriage-feast of one Sibchurn's son at Poohchal on the night of the robbery; that the prosecutrix was persuaded by Taiboolah to accuse him; that no stolen property was found in his house; that he was taken by the Mohurrir to the prosecutrix's, and in the evening to the Police Station; that he was then counselled to confess, but refusing was maltreated; that he was then directed to give up Rs. 6 to obtain an acquittal; that having been beaten by two Burkundazes in the Mohurrir's presence, he was instructed to confess, and that he was not in his senses when he made his admission before the Joint-Magistrate.

In the Mofussil this prisoner stated that on Sunday night in Falgoon, he, prisoners Nos. 8 and 9 &c. went to prosecutrix's house, when prisoner No. 9 and Agoo entered by a hole and gagged and blinded her; that prisoner No. 8 brought from the house of prisoner No. 7 a light; they then dug up the floor and found about Rs. 100, in cash, some cowrees, four bracelets and a necklace, a pocket handkerchief, &c., &c.; that he gave to prisoner No. 7 the necklace and bracelets; that he got Rs. 6, and the rest of the booty remained in the hands of prisoner No. 9.

Before the Joint-Magistrate, that on the day prior to the robbery, prisoner No. 9 had informed him that prisoner No. 7 had told him of a Mahomedan woman possessing some wealth; that if he would join he would get her share; that he and prisoner No. 9 accordingly agreed; that he being outside, prisoner No. 8 having made the burglarious entry, opened the door for prisoner No. 9 and others; that prisoner No. 9 gagged her whilst the robbery was in progress, that Rs. 6 was given him by Petun; that prisoner No. 9 burnt the prosecutrix, but how, he cannot say; that, on being arrested, he gave up his share of the booty; that he made a similar confession in the Mofussil on being maltreated, although prisoner No. 9 forbad him; that although his confession was extorted by the Police, his admission before the Joint-Magistrate was his spontaneous and voluntary act; that he had no witnesses to produce, but after committal he desired to prove an *alibi*.

Prisoner No. 7 denies all knowledge of the affair that the

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Police tortured her and made her point out who came to her house for a light; that the necklace and four bracelets produced by her were her mother's property.

In the Mofussil she admitted that on the night of the robbery, prisoners Nos. 6 and 8 came to her house for a light; that on going away they told her not to mention their names and gave her the necklace and bracelets which she produced; she denied having counselled the robbery.

Before the Joint-Magistrate she said, that hearing the prosecutrix's cries for aid, she called her niece witness No. 19; that two or three men laid hold of her and prevented her crying out; that on her remaining silent they promised to give her something, they then lighted a light, and after the committal of this robbery gave her the necklace and bracelets which she delivered to the Mohurrir with prosecutrix's knowledge; that she was beaten by some of the Police whose names she did not know. Prisoner No. 8 says he was at Julliaghatta on the night of the robbery; that he returned home on the Tuesday following, and that on that night his house was searched without effect; that he was placed in the thannah stocks and persuaded to confess; that the next morning he was beaten by two Burkundazes with a wooden shoe, and then taken to the Mohurrir's cow-house; that his fingers were bound and he was otherwise tortured, but that treatment failing to induce him to confess, the Mohurrir directed him to bring some money when he would be released; that hereupon he was accompanied home by two Burkundazes and *sold paddy for* Rs. 4, which sum he brought to the *pharee;* that he was then re-imprisoned in the cow-house and salt and water thrown in his eyes; that he cannot say what was written; that he was detained two days without food; that he was instructed by the Burkundazes to make the same statement as before, but this story he was unable to substantiate by evidence.

In the Mofussil he declared that he in company with prisoners Nos. 6 and 9 &c. proceeded to prosecutrix's house; that prisoner No. 9 cut the hole; that prisoners Nos. 6 and 9 entered the house, and having brought a light from the dwelling of prisoner No. 7 demanded her money; that prisoner No. 9 then burnt her, and prisoners Nos. 6 and 9 dug up the floor and plundered about Rs. 100, in cash and the above enumerated articles; that prisoner No. 6 received Rs. 6, prisoner No. 7 a necklace and four *kharoos*, himself Rs. 4, one Agoo Rs. 6 and the remainder was in the possession of prisoner No. 9.

In the Foujdary this prisoner declared that he, prisoner No. 9 and Agoo (at large) went to prosecutrix's house; that they entered the dwelling and he remained outside; that the prosecutrix called for aid; that Agoo dug up the floor; that the property as above was discovered; that prisoner No. 9 gave to prisoner No. 7 the silver ornaments as hush money; that pri-

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soner No. 6 received Rs. 6; himself Rs. 4; Agoo Rs. 6 and the remainder was in the hands of prisoner No. 9; that he gave his share to the Police; that prisoner No. 9 burnt the old woman; that prisoner No. 7 had informed him of her being in possession of some treasure; that although he had confessed under a sense of fear in the Mofussil, his present confession was altogether spontaneous, no one having threatened, persuaded, or maltreated him.

Prisoner No. 9 denies all knowledge of the affair; says he was at one Hussan Ally's house selling paddy; that on the Tuesday he returned home; that he was apprehended without cause; that although the cowrees were found in his house, he had ten times as many there; that the handkerchief was his own property and worn by his son at the Eed; that the Sicca Rupee (one) was his own also.

In the Mofussil he states that he is only acquainted with prisoner No. 6, with whom he is at variance and therefore he is accused.

Before the Magistrate he observes that he is accused because on the complaint of prisoner No. 7, he was once the means of prosecutrix's son Hussan Ally being placed in the stocks; that prisoners Nos. 6 and 8 causelessly took his name; that he was absent at Rozussurree.

Witnesses Nos. 21 to 28 (excepting No. 23 absent) declare that prisoner No. 6 was at Shibchurn's marriage-feast on the night in question at Barytea; but the prisoner himself said he was at Poorubchal, distant according to witness No. 24, three *prohurs*, to witness No. 26, ten or twelve *ghurrees*, and to witness No. 28, ten *ghurrees* from the village Barytea. Witnesses Nos. 30, 31 and 32, relatives of prisoner No. 7, fail to recognize the ornaments given up by her. Witnesses Nos. 33, 36 and 39 say nothing in favor of prisoner No. 8, *he himself declaring* that he sold the paddy to raise Rs. 4, whereas witnesses Nos. 36 and 39 state that his mother did so. Witness No. 39 could not say to whom the paddy was sold.

Although prisoner No. 9 says he was at Ragapury or at some place on the river Shunkur selling paddy, none of his witnesses Nos. 43 and 45 substantiate the fact. No. 45, his brother-in-law fails to recognize the silk pocket handkerchief which the prisoner *admits* having given up to the Police.

The prisoners have altogether failed to offer any proof of maltreatment, and I think it is inferrible that if they sustained at the hands of the Police the indignities they now declare that they did, they would have represented the fact to the Joint-Magistrate, and not repeated their confessions in his presence, assuring him that although they had been somewhat illtreated, their declarations before him were their own voluntary and spontaneous acts: from the evidence for the prosecution

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and Dr. Beatson's report, it is clear that the prosecutrix must have been considerably tortured by the robbers, at the head of whom, had the evidence been stronger, I would have placed prisoner No. 9; if the confessions of prisoners Nos. 6, 7 and 8 were compulsory, why was not a confession from prisoner No. 9 extorted? No reason presents itself to my mind, and therefore I am altogether unprepared to receive the prisoners' versions unsubstantiated by proof. We have full proof that the property found in the possession of prisoner No. 7 belongs to the prosecutrix, more especially as the prisoner's own witnesses fail to recognize the ornaments as her mother's. It is proved that this prisoner entertained feelings of dislike against the prosecutrix, and on the evidence adduced, it is inferrible that she counselled the robbery, and from her taking no steps to cry out or prevent the attack and by her giving the thieves a light, it would seem clear that she sided with, aided and abetted them, the evidence being therefore clear against the prisoners, and their defence futile, and taking into consideration the *aggravated* circumstances under which this robbery was committed, I would sentence prisoners Nos. 6 and 8 to ten years' imprisonment with labor in irons. Prisoner No. 7 to six years' imprisonment with labor suitable to her sex and prisoner No. 9 to seven years' imprisonment with labor in irons, and under Act XVI. of 1850 to the payment of a fine of Rupees 96-9 being the amount of property unrecovered.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) This is an extremely unsatisfactory case. In the first place, although there seems no reason to doubt that a burglary did take place in the house of the prosecutrix, we have no evidence whatever on which we can rely relative to the details. The burglary is said to have taken place on the night of the 27th February. It does not appear that any respectable people in the village were made acquainted with what had occurred, or that any information was given to the gomashta or other zemindary agent in the village. The sole witness we have to the fact of plaintiff's house presenting any appearance of a burglary is the chowkeedar. He admits that he gave no information on the 28th and though he says he went to the thannah on the 29th, there is no proof of the fact. The Mohurrir denies it, and there is no apparent reason why the Mohurrir should have told a falsehood in this matter. He evidently did not intend to conceal the crime for he reported it next day. The chowkeedar says that the prosecutrix told him on the morning after the burglary, that she had recognized the prisoner Jadooram, but when he reported the burglary at the thannah on the 1st of March, he did not mention this and there is no proof that the prosecutrix himself mentioned it to any one before she saw the Mohurrir. Some doubt also rests

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on the prosecutrix's statement that she was burnt by the thieves to compel her to point out her money, for the evidence of the doctor who examined her twelve days after the burglary, shows that there was then no trace on her person of any thing beyond a few abrasions which he says *may* have been burns or scratches.

Then as to the property alleged to have been recovered, one necklace and five bracelets are produced by the mother of prisoner Jullee Bha who resides in the same compound with the prosecutrix. But there is not a tittle of evidence that they belong to the prosecutrix. They are not recognized by any witness, and two of the witnesses for the prosecution Ajmut Ali and Oomed Ali who are stated to be respectable men, depose that the prosecutrix at first denied that they were her property, on which the Mohurrir told her to put them on and they would become her's. The Judge and the Magistrate seem to have thought that the fact stated in the Magistrate's grounds of commitment of the prosecutrix being able to pick out the ornaments from a heap of others in the Magistrate's Court, (a fact with respect to which some evidence should have been given if it was intended to rely upon it) while the prisoner was unable to do so, is conclusive proof that the ornaments belong to the former, but they appear to have over-looked the fact that the prosecutrix had ample opportunities of becoming acquainted with the appearance of the ornaments during the Mofussil inquiry, even if she had not been in the habit of seeing them in the possession of Jullee Bha's mother. Why this person was not examined, does not appear. The Magistrate blames the Mohurrir for not sending her in, but does not explain why he did not send for her himself.

It is admitted that the prosecutrix and Jullee Bha are at enmity. It is certainly not an ordinary occurrence for thieves to leave a portion of their plunder with a woman living in the same compound with the person they have plundered, and the evidence of Ajmut Ali and Oomed Ali coupled with the suspicious proceedings of the Police on which the Magistrate comments, ought to have induced him to collect all available evidence, which could throw any light on the transaction.

We have no evidence as to the place whence Jullee Bha's mother produced the ornaments. There is no proof whatever that they were concealed. The same is the case with the only other piece of property capable of recognition the silk handkerchief, said to have been found in the house of the prisoner Petun. There is but one witness to the handkerchief having been found at Petun's, and he does not know where it was found or who found it. The Judge says, that witness No. 4 identifies this and the other property found, but this is a mistake. The only witness who speaks on the subject is No. 7

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and all that he says is, that prosecutrix had a handkerchief and ornaments like these, but he cannot say whether they are the same or not.

With regard to the confessions of the prisoners Jadooram, Jullee Bha and Shammud Ali, it is quite impossible to place any reliance on them. The prisoners themselves say that they were compelled to confess by being beaten. This is corroborated by the two most respectable witnesses for the prosecution. There is no evidence of any voluntary confession in the Mofussil of Jadooram and Jullee Bha. The attestation of the witnesses in Jadooram's confession is dated the 1st of March, whereas the answers of the prisoner are stated to have been taken on the 2nd. None of the confessions of the prisoners though taken on the 2nd or 3rd, appear to have been sent in before the 5th. This bears out the statement of Ajmutoollah who says, that the witnesses to the confession were made to sign blank papers, and raises a strong suspicion that the Police have been tampering with the confessions. Jadooram and Jullee Bha it is true repeated their confessions to the Joint-Magistrate, but there is no corroboration of these confessions. If they were true, the prisoners would certainly have been able to produce a larger amount of money than the 6 and 4 rupees obtained from Jadooram and Shummud Ali, which is just about the amount it might be expected would be found in the houses of people of their class, and the Police would have been under no necessity of detaining the confessions, and resorting to the conduct described by the witnesses. We should also in that case have had property undoubtedly belonging to the plaintiff found in the prisoners' houses, and evidence would have been forthcoming both to the identity of the property and the search of the prisoners' houses. There is nothing of the sort here, and there is much on the record to induce me to believe that the Mofussil confessions were extorted, and that the prisoners may have been induced by the threats or inducements held out by the Police to adhere to them before the Joint-Magistrate. Such conduct I am afraid is by no means rare. I had a case before me to-day in which the Police compelled a prisoner to adhere to his Mofussil confession by a threat of sending in the women of his family if he did not, and I have, in the course of my experience, met with many other cases of a similar nature. Against Petun there is no evidence whatever. There is no certainty that the handkerchief was found in his house, nor is it proved that it belonged to the prosecutrix. The Moulvee convicts Petun chiefly on the confessions of some of the other prisoner before the Magistrate which he ought to have been aware was not evidence against him. I must acquit the whole of the prisoners and direct their immediate discharge.

REGULAR CASES.

AUGUST,

1859.

REGULAR CASES.
August 1859.

Present:

C. B. TREVOR, Esq., *Judge*, and G. LOCH, Esq., *Officiating Judge*.

GOVERNMENT

versus

SAMUEL WASHINGTON JOHNSON.

24-Pergunnahs.

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Held by the Court that if the evidence of the only one witness had been consistent throughout as to the use by the prisoner of the words "he would beat his wife to death," in that case, as a man's own words are the best evidence of his intention, the crime of the prisoner would clearly have amounted to wilful murder; that that evidence is inconsistent and throughout shows a tendency to exaggeration, and from the nature and circumstances

Crime Charged.—Wilful murder of Sarah Johnson his wife.

Committing Officer.—Mr. C. F. Montresor, Magistrate of the 24-Pergunnahs.

Tried before Mr. E. Jackson, Officiating Additional Sessions Judge, on the 24th April, 1859.

Remarks by the Officiating Additional Sessions Judge.—I conducted this trial with the assistance of the three gentlemen noted in the margin,* who sat with me as assessors.

* Mr. J. S. Bell.
Mr. S. Wright.
Baboo Taruknath Sen.

The prisoner Samuel Washington Johnson pleaded *not guilty*. He is a native of Richmond in Virginia, a black man, of slave origin. He is charged with having on the night of the 31st March last, beaten his wife Sarah Johnson, also a black woman from the United States, to that extent that she died before morning.

There is but one witness to the assault upon the unfortunate woman. Witness No. 1, Mr. Dorries, deposes that he occupies a house in the same compound as the prisoner and his wife did, about a hundred feet distant from them; the prisoner was married to his wife about the 12th March last; she had, however, lived with him for several months previously; the prisoner was in the habit of beating his wife; the witness, therefore, was not surprised when he heard on the evening of the 31st March, about 8 or 9 o'clock, the wife being beaten and calling out; the witness took no notice of it, but went to sleep. Later in the night about 11 o'clock, he was awoke by the prisoner calling out to him. He went out and saw the prisoner's wife up to the waist in a tank in the compound, the prisoner standing on the steps of the ghaut leading to the tank, abusing her and kicking her. The woman was pulled out of the tank, and the prisoner requested the witness to put several questions to his wife, the last of which was as to whether she had committed adultery with a Mr. Fells. She denied that she had. The

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prisoner, however, immediately commenced throwing every thing he could lay his hands upon at her. The dishes and the crockery which were on the table, an American wooden clock and a chair were all successively thrown at her, and the broken pieces were taken up and again thrown at her. The clock marked A, a broken dish B, and a broken stick C, are produced in Court and identified by the witness as a portion of the things which the prisoner threw at his wife. She became much exhausted and the witness endeavoured to stop the prisoner. But the latter continued to strike her, and declared that he would kill her. He did, however, desist after a time, and the witness left them and went to bed. He states that he again the same night heard the sound of beating and of the woman's groaning, and again later in the night, heard her groaning in a weaker voice. The next morning his suspicions were roused by prisoner telling him that his wife had run away during the night and by seeing that the prisoner's house-door was padlocked. He sent word to the thannah and on the Police coming, the prisoner admitted that his wife had died from the effects of the blows which he had given her, though he had no intention to kill her.

Witness No. 2, Tarineechurn Sen, Darogah of Thannah Entally, and No. 3, Mr. Tayler, Inspector of the Entally Division, prove going to the prisoner's house on the morning of the 1st April, having heard from Mr. Dorries that there was some suspicion of the prisoner having killed his wife, they found the prisoner at his tobacco manufactory which was close by, he admitted having beaten his wife and that she had died in consequence, but declared he had had no intention to kill her. They examined the premises when the prisoner unlocked the door; found the dead body of Mrs. Johnson lying on the cot with the musquito curtains down; found blood on the clothes, the floor, and the walls of the house, both inside the room and outside in the verandah, also on the steps of the ghaut; they saw the body was covered with wounds above the waist; they saw the floor was strewed with broken crockery and a broken clock, and Mr. Tayler found the broken stick C, as well as a large bamboo club F, in the room. Mr. Tayler describes the appearance of the room as if every thing was upset. The stick C, is nearly four feet long, a not very thick or heavy stick of wood. There can be no doubt that the prisoner struck his wife with this. It is fresh broken. The club F is a large bamboo, six feet long and very thick, a blow from which must have killed the person struck or broken a limb. It is covered with blood. But it is satisfactorily proved that the blood was the result of a *fracas* which the prisoner had with some palkee-bearers a few days before, and there is no reason whatever to believe that the prisoner struck his wife with it.

of the case as disclosed in that evidence, which is all the Court has to rely on, the actual intention to kill is not fairly inferrible. Held also, that there is not on the record, evidence of provocation giving rise to the prisoner's passion sufficient to establish the positive absence of intent to kill, and thus to reduce his crime to manslaughter or simple culpable homicide; that, consequently, the prisoner is guilty of the crime of illegally taking human life when not shewn to have been done with the positive absence of intention, or with the presence of actual intention to kill, viz., aggravated culpable homicide.

Prisoner

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sentenced, in accordance with the recommendation of the Sessions Judge, to imprisonment with labor and irons in transportation.

Witness No. 6, Albert Mitchell, deposes that he lives in Zigzag Lane, Calcutta; that the tobacco manufactory belongs to him; that he has given Johnson a four-anna share to carry it on; that word was sent to him on the morning of the 1st April that something had occurred, and he went down to the manufactory, the Police came very shortly after. Nothing passed between him and Johnson regarding the murder before the Police arrived. And he knows no reason why Johnson should beat or murder his wife.

Witness No. 7, Mr. Baillie, the Assistant Surgeon of the 24-Pergunnahs, deposes that he examined the person of the deceased Sarah Johnson and refers to his report dated the 2nd instant, for detailed particulars of the wounds he then observed upon her, they being very numerous, of a very peculiar shape and description, such as might have been caused by broken dishes and the clock, the tin-dial plate especially. The wounds were on the head, neck, chest, and above the waist and on the thigh. The severest wounds and those which probably caused death, were two cuts on the head penetrating to the skull, but not fracturing it. But all the wounds must have contributed to cause exhaustion and subsequently death.

Witness No. 8, William Jardine, deposes that he lives not far from the prisoner; that on the 31st March about 7 or 8 in the evening, he observed the prisoner and Mr. Fells fighting and abusing each other on the road before his house, he went down and parted them, and they went to their houses. He does not know what caused the quarrel nor is he aware that the prisoner has any good cause to suspect his wife. This witness and witness No. 1, attest the prisoner's confession made before the darogah.

Witnesses Nos. 9 and 10, Serjeants in the 24-Pergunnahs Police force, attest his confession before the Magistrate of the 24-Pergunnahs.

In both confessions the prisoner admits the assault on his wife, without any intention of causing her death, attributing it to rage caused by his being convinced of her being unfaithful to him.

Witnesses Nos. 11 and 12, are up-country natives of low caste, who live near the prisoner's house; they depose they heard a disturbance and cries and noise as if the prisoner was beating his wife proceeding from his house.

Witness No. 13, was produced to prove the finding of a shovel and a grave partly dug in the compound of the prisoner's house. I did not however examine him. Witness No. 1, deposed to this fact and brought it to the notice of the Police. He did not discover it till the 2nd of April, when observing the shovel standing in the ground, he went up to it and saw a grave one foot deep and six feet long dug. He supposed that

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Johnson had intended to have buried his wife there, I have no doubt that this was the case. It must have been dug at day-light when he found his wife was dead and he had made up his mind to put about the story that his wife had run away. There is no ground for supposing that it was dug before. The Police should have discovered this when they were examining the premises the morning after the murder.

Witness No. 14, was brought forward to prove that the prisoner had, on a previous occasion, assaulted him. But I did not think it necessary to record this evidence.

The prisoner when called on for his defence admitted that he had struck his wife as deposed to by the witness Mr. Dorries, but denied that he wished to kill her or that he said so. He stated that he had been three years in Calcutta, had here met his wife who was a black woman, from the United States like himself, had lived with her for a long time before marriage. She had been constantly unfaithful to him, still he had married her. From the day of their marriage till the day on which the assault took place he had no reason to suspect her of infidelity. On that day she had permission from him to go to some ship to bring away some clothes. She had gone and returned in the evening in a carriage with Mr. Fells and admitted that she had been treated by him and been drinking with him during the day. He had an altercation with Mr. Fells in consequence. After Mr. Fells left he was very angry with his wife and upbraided her for disgracing him. She at last made use of a disgusting remark regarding her intimacy with Mr. Fells, which so enraged him that he beat her and struck her with every thing he could lay hands on. She escaped from him and ran into the tank, when he called Mr. Dorries, and the scene passed between them as described by the witness, except that he did not say he wished to kill her. After the witness's departure he called his wife to come and take off his shoes, she said she was too weak. He therefore placed her in her cot, and he went to sleep himself. He found her dead in the morning.

The assessors give in the following verdicts.

Verdict of Messrs. Bell and Wright. "Our verdict is that the prisoner is guilty of wilful murder. The deceased was cruelly and brutally assaulted and the injuries she received caused her death."

Verdict of Baboo Taruknath Sein. "After a careful considera-tion of the proceedings of the case, I am of opinion that the prisoner Johnson is guilty of the crime charged against him i. e. the wilful murder of his wife. There was, it is true, some cause for jealousy, but that does not make the crime excusable in the present case. The prisoner appears to have persevered in beating his wife with things which he well knew could occasion instant death. The prisoner confesses almost every-

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thing advanced against him by the witness to the fact, Dorries, and the circumstantial evidence supports the deposition of that witness fully."

I agree with them in considering that the evidence proves that the prisoner is guilty of the wilful murder of his wife. His only excuse for the brutal and continued and repeated assaults, which he appears to have made on his wife in fits of uncontrollable passion, on the night of the 31st March, is that he had some reason to suspect her of having been unfaithful to him in her intercourse that day with Mr. Fells. I have no doubt he thought the remark made by the deceased above alluded to as admitting her guilt. But even if it had been established, it cannot, under the circumstances, be admitted as any palliation of his crime, he having deliberately not only cohabited with her after she had been unfaithful to him, but even married her. I am of opinion, however, that the prisoner had no determined premeditated intention to murder the woman. I therefore recommend a sentence of transportation for life being passed upon him and refer the trial for the final orders of the Nizamut Adawlut.

Remarks by the Nizamut Adawlut.—(Present: C. B. Trevor and G. Loch.) The Sessions Judge, together with the assessors who sat with him on the trial, have found the prisoner Samuel Washington Johnson, guilty of the wilful murder of Sarah Johnson, his wife, and the Sessions Judge in the absence of a premeditated intention on the part of the prisoner to murder the woman, has recommended that a sentence of transportation for life should be passed upon him.

The deposition of the medical officer, Dr. Baillie, is to the effect that he "examined the body of the deceased Sarah Johnson "on the evening of the 1st April, and found several severe "scalp wounds on the head, several cuts about the face, chest, "neck, person, and arms, and on the right thigh; that the "injuries on the head were the immediate cause of death, but "all the other wounds contributed to occasion and hasten death "by exhaustion; that the wounds on the head laid bare, though "they did not fracture, the skull; there was an extravasation "of blood between the bone and the integuments; the body "was that of a healthy woman without any disease to shorten "her life; the two wounds on the head alone might have "caused death, but this is not certain; these wounds may have "been caused by a dish or a soup-tureen thrown with great "violence, for instance if she was crouching down and he was "standing over, and threw them at her with great force; the "large club produced would have fractured her skull, and there "were no marks on her which that club could have made, but "the cuts and marks were peculiar; they might, some of them "have been inflicted by the clock and dial marked A, or by the

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"stick marked C. or the dish B; in fact, they were such as "would have been seen upon her if she had fallen on a quantity "of crockery"

There is only one witness who can give direct evidence as to the mode in which these injuries were inflicted on the deceased; that witness, Dorries, before the Sessions Judge deposed that "about 8 or 8½ P. M. on Thursday the 31st March, he was in "his house when he heard the prisoner beating his wife; she "was crying out; he did not take much notice but went to bed; "about 11 or 12 o'clock he heard prisoner calling out to him; "he went out and saw prisoner at the *ghaut* beating his wife; "she was in the water up to her waist; it was a dark night "but he could see them both; that prisoner could not reach "his wife with his hands but he struck her with his feet; that "prisoner wore at the time a patent leather boot; that he was "abusing his wife very violently and she was crying and begging "not to be beaten any more; that prisoner desisted and called "on his wife to come up stairs and go into her room; that she "was afraid and would not come, so he dragged her up; that "prisoner Johnson then said, I have something to say to you be- "fore her. I want you to be a witness; that they went into the "room: that Sarah Johnson was sitting on a chair close to the "bed; Johnson took up a Bible and gave it into his wife's hands "and told witness to ask her if she knew that Bible; that he "did as he was told; she said she did know it; there were a "couple of ribbon markers in it which she also said she knew; he "then asked her if she ever perused that Bible; she said, Yes; "Johnson then said, That is enough, and he commenced beating "her before him; he struck her with the dishes and the plates "which were all on the table, he threw them at her whilst she "was sitting on the chair between the bed post and the window. "Witness did not see him strike her with a dish in his hand, "he kept throwing things at her, he threw a wooden clock at "her, like that marked A; all these things struck her. Prisoner "was standing about three or four paces from her, at last when "prisoner found nothing else he threw the chair at her, witness "saw the woman was wounded and bleeding all over the body and "breast, and begged Johnson to desist, but he continued to beat "her and said, 'I am going to beat her to death,' he gave no "reasons for this; at last she began to cry out for some water; "witness took a glass which was on the table and some water "from a goblet which was beneath it and gave it to the woman. "Johnson told him not to do so, though witness said she was "very weak and dying; witness left them, and Johnson wished "him good night; witness went to his own house and to sleep, "but was awakened up again by the noise of Mrs. Johnson "crying out, 'Oh dear, don't kill me, don't kill me,' and he "heard the noise of some one beating another; witness listen-

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"ed a little but could not hear any noise for a time but he then "again heard, in a weaker tone, Mrs. Johnson's voice calling out, "'Oh dear! oh dear!' Witness went, listened again and saw "nothing more till the morning."

The witness then goes on to depose that, in answer to a question put by him to the prisoner on the following morning regarding his wife, he said, "She has run away." He, in answer to questions put to him by the Court, swore "that he distinctly "recollected the prisoner saying that he would beat his wife to "death, though he may not have mentioned it before the "Magistrate and may not have recollected it then; that the "prisoner did not strike his wife with the club marked F. in "his presence, nor did he strike her much with the short stick "in his hand; that he did not know what the prisoner and his 'wife alluded to regarding the ribbon markers, but prisoner 'taxed her with having behaved badly with a Mr. Fells, 'though whether prisoner had any real cause of jealousy or not 'he knew not; that he heard the prisoner's confession before the "police that he had beaten his wife, but did not mean to kill her; that he did not at once inform the police whether he heard Johnson say that he would beat his wife to death, because it is his habit to beat her, and he, witness, did not "think he was going to kill her."

On turning to the depositions given by the witness before the Magistrate and the police, with a view of testing the deposition before the Sessions Judge by them, it appears that they both are less full than his last deposition, for in his evidence before the darogah, the witness does not state that he saw the assault made by the prisoner on his wife after their return to the house from the ghat, but that he heard the noise of beating after he had been permitted to leave the house and shortly after he heard the woman ask for water which the prisoner refused to give. The witness in fact, omits the whole account of the assault which he subsequently details at length in his deposition to the Magistrate, and which if it occurred in his presence, he must have remembered when examined by the police. His deposition before the Magistrate is in all material points but one, in accordance with what he has stated before the Sessions Judge, though there is an evident tendency to exaggerate in each succeeding deposition. The point in which the discrepancy exists is that he never stated either before the Police or the Magistrate, that *the prisoner said he would beat his wife to death.*

The prisoner in his defence before the Sessions Judge, admits having been in a great passion with his wife, for having disobeyed and disgraced him, and with having beaten her severely by throwing at her several articles of crockery, &c., but pleads that he had no intention to kill his wife, who died from exhaus-

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tion during the night. The prisoner called no witness in his defence.

Now, independently of the subsidiary corroborative evidence in the case, which it is unnecessary to detail at length, as it is fully set forth in the report of the Sessions Judge, it is clear from the depositions of Dr. Ballie and Dorries, witness No. 1, that the deceased came to her end in consequence of the injury received by her in the brutal assault made upon her by the prisoner. It only remains then to determine the particular crime of which the prisoner has been guilty.

Had the evidence of the only eye-witness been consistent, and had it appeared in his three several depositions on oath before the Police Magistrate, and Sessions Judge, that the prisoner used the expression "that he would beat his wife to death," in that case, as a man's words are the best expression of his intention, no doubt would have existed as to the nature of the prisoner's offence. It would clearly have been wilful murder, but such expression of a man's intention is not *requisite* in order to constitute the highest crime against society, if that intention is evidently or fairly inferrible from the nature and circumstances of the case. Now, in the case before us, is such an intention fairly inferrible from the acts of the prisoner? That he was, for some cause not quite clearly explained in the evidence, in a passion with his wife is clear; but there was no provocation giving rise to that passion such as the law deems sufficient to establish the positive absence of intention to kill and thus to reduce the crime to simple manslaughter or culpable homicide; but then, again, on the other side, though the assault was a most brutal one, yet, considering all the circumstances of the case together with the nature of the articles with which she was wounded and the very slender evidence by which as it is, the circumstances have become known to us, we do not think that the presence of an actual intent to kill, in the mind of the prisoner, is to be inferred from them, and we, therefore, cannot find him guilty of wilful murder; but we think he is guilty of that crime which consists in the illegal taking of human life when not shown to have been done either with the positive absence of intention or with the presence of actual intention to kill, viz., aggravated culpable homicide, and we sentence him, as recommended by the Sessions Judge, to imprisonment with labor and irons for life in transportation.

PRESENT:

G. LOCH, ESQ., *Officiating Judge.*

GOVERNMENT AND KAROO SAHOO

versus

GONOO BHUGGUT (No. 1,) MUSST. JEECHEEA (No. 2,) AND MUSST. KEOLEE (No. 3.)

Bhaugulpore.

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Held that in criminal cases in which the Magisterial authorities have not final jurisdiction, a Magistrate may send for the record of a case made over to a Deputy Magistrate for trial and though such Deputy Magistrate, exercising the full powers of a Magistrate, after examining the witnesses for the prosecution and taking the defence of the prisoner and hearing his evidence, have declared the charge not proven and discharged the prisoner; the Magistrate has authority to

CRIME CHARGED.—1st count, No. 1, burglary and theft of property valued at Rs. 162-15; 2nd count, Nos. 1, 2 and 3, receiving and possessing stolen property knowing at the time of receiving it that it had been acquired by the above burglary.

CRIME ESTABLISHED.—Possessing stolen property knowing at the time of receiving it that it had been acquired by theft.

Committing Officer.—Mr. H. H. Robinson, Officiating Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 10th December, 1858.

Remarks by the Sessions Judge.—Valuables were carried off by burglary, from the dwelling of Gucool Sahoo, a minor, whose guardian is the prosecutor, during night of 11th June last, without any detection at the time. Next morning it was bruited about that some articles were lying before the prisoner, Nunroo's shop, and on prosecutor's proceeding there, he recognized a *dobur pugree* and some rice, less valuable portion of the stolen property, and at once complained at the Bhaugulpore thannah. Gunnoo also had complained at the same thannah that thieves had, the same night, robbed his shop of vessels, &c. valued at Rs. 22-6, by cutting open the *tattie*. He was on his way to his house to report the matter when he met Heera Dome and his two sons-in-law carrying off a bundle of rice. He attempted to seize them but they beat, threw him down and escaped. Heera and Jubboo Domes were apprehended but nothing came of this complaint.

Karoo Sahoo, prosecutor.

Gunnoo's evidence, 12th June, No. 30.

It does not clearly appear which of these two complaints was the prior one. Sheoram Awustee darogah told the Magistrate that both complainants were in attendance together. Rohimlal the Naib darogah told this court that Gunnoo's was first written, but prosecutor's followed immediately. The two first within subscribing witnesses to

23d October, No. 64.

Wit. No. 2, Khemon Sahoo.
„ „ 3, Misunee Sahoo,
„ „ 4, Kyloo Maslim,
„ „ 5, Meerun Momin,
„ „ 6, Seeblal,
„ „ 7, Toolsee Sahoo.

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reopen the case, the proceedings before the Deputy Magistrate being only preliminary, and if he think the evidence on the record sufficient to warrant the committal of the prisoner for trial to the Sessions, he may, without taking further evidence, commit such prisoner.

Gunnoo's complaint as also the other witnesses know nothing at all about it, whilst prosecutor says his was the first complaint of the two, and that he never met Gunnoo at the thannah, whilst Umritlal witness No. 31 zemindar's Amla and subscribing witness to Gunnoo's subsequent defence at the thannah to Karoo's complaint, deposes Karoo's complaint did not take place until four hours after Gunnoo's. There was also no proper entry in the diary of Gunnoo's complaint. It is necessary to notice these irregularities, for under other circumstances they might be of some moment in a case. They are not uncommon and some times without any sinister object in view I believe, originate in the lax way the police have of conducting matters first verbally, and then of putting every thing in ship-shape fashion in writing afterwards, without too, being very particular as to the actual witnesses subscribed thereto, though in this respect also native witnesses themselves are very trying thinking denial always safer than explanation, in anything they are not beforehand interested in and prepared for.

Wit. No. 1, Kyloo Soondee.
" " 3, Munee Sahoo,
" " 4, Kyloo Maslim,
" " 5, Meerun Momin,
" " 6, Seeblal.

The probability, however, is that Gunnoo's was the prior complaint of the two, but the police on receiving Karoo's complaint very properly at once acted on it. Proceeding to prisoner's dwelling, his wife, Jeecheea, prisoner No. 2, gave up the stolen jewels Nos. 1 to 5 and 25, and pointed out buried under Mudoo Gope's plantain trees, other jewels Nos. 14 to 18, whilst the mother Keolee produced out of the shop, more jewels Nos. 6 to 13, and two more Nos. 19 and 20 were found on searching her clothes at the thannah. The remaining Nos. 21 to 24, are the clothes and rice left exposed before the shop and which led to the discovery.

Wit. No. 30, Roshunlal Naib, Darogah.
" " 31, Umritlal.

Gunnoo's defence thereon followed 12th June, No. 11. He adhered to the same story as that set up in his complaint, viz. that pursuing the thieves they threw him down, but with the fresh addition that he had first seized their bundle, which they very good naturedly left, as well as himself, behind helpless. He brought the bundle home, found the jewels inside the rice and made them over to his mother. She took them out of the rice and concealed them inside the house, he cannot say why, whilst he went to complain at the thannah. The Chowkeedars were aware of his having brought the bundle home. His defence has been verified by its writer and subscribing witnesses. His defences before the Magistrate and this Court, are much to same effect with addition, that the Chowkeedars joined him in pursuit of the thieves and examination of the bundle they left

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behind, which they made his mother carry. He proposed going with it direct to the thannah close by, but the Chowkeedars over-ruled and said to leave the bundle at his shop which he did and then went on to complain at the thannah. The Chowkeedars denied anything of the kind. He pleaded wildly that he had been falsely accused out of spite by Police and Chowkeedar. When his complaint at thannah of 12th June, No. 30, was read over to him verbatim in this Court, he duly acknowledged it as well as his signature thereto. When the question followed why he had omitted to mention therein his having found the bundle and jewels, he answered he had written all and then asked how he had not replied accordingly at first, he remained answerless.

No. 14 & 36, Ramoo Chowkeedar.
„ 15, Kishen Singh.
„ 16, Beharee Chowkeedar.

Questioned why the trumpery articles of the stolen bundle Nos. 21 to 24 should have been left exposed to public view and the jewels abstracted, he replied they were in the Chowkeedar's charge. The witnesses summoned by him repeat the prisoner's story relative to the Chowkeedar's cognizance of the stolen bundle, but they are evidently tutored ones, and their evidence is as lame as the story itself. Not one of them can explain how the stolen jewels were produced in Court, or why the valueless articles contained in the same bundle should have been exposed to public view and not the jewels. Gunnoo also acknowledges his signature to his thannah defence, No. 11, though he denies its tenor.

Wit. No. 8, Gopal Goondee.
9, Koonja Goondee.
10, Soodun.
11, Etwaree.
12, Bikharee Goondee.
13, Jekoo Goala.
14, Salum Goondee.

Jeecheea told the Police her mother and husband had taken the jewels out of the bundle and divided them into three shares, two to be buried and the third kept by her mother, she delivered them up accordingly. She denies this before the Magistrate and this Court without setting up any other particular defence. When asked to account for her husband's continued acknowledgments that the jewels were in the bundle, all the reply she would make was, that she had not seen them.

Keolee told the police she took the jewels, because Gunnoo said they belonged to him, and that she had accordingly concealed them and what had been found on her person she had herself given up. That before the Magistrate adopted Gunnoo's proposed story of the Chowkeedar's having made her carry the bundle, which she saw contained the jewels, and when the Police came up, the Chowkeedar in the confusion managed to produce them. She altered this defence before this Court into her not having seen the jewels. She did not know what had become of the jewels in the bundle or how they were in Court. Those

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found on her person had been smuggled there by Toolsee, witness No. 6, and which she falsely says she told the Magistrate.

The jury unanimously acquit Gunnoo, but convict Jeecheea and Keolee on the second count.

Gobindpershad, Nya Bazar, Bhaugulpore.
Jaffar Ali, Patna.
Mungeyree Sahoo Kugareea, Monghyr.
Hidait Hossein, of Sheekpoora, ditto.

In this verdict I must differ. The circumstances of the case do not admit of the possibility of the wife's and mother's having acted independently and without Gunnoo's complicity. If one is guilty, all three are guilty. There can of course, be no conviction for burglary, and even that on the 2nd count as resting specifically on the burglary itself cannot stand; although the stolen articles were undoubtedly originally so obtained, yet there is no proof that the prisoners at the time knew them to be so acquired, although the presumption is, they possessed themselves of stolen property knowing at the time of receiving it that it had been acquired by theft, and on which my conviction will rest as a cognate count involving no higher offence. Further, the trial first came before the Joint Magistrate exercising full Magisterial powers, who acquitted the parties. It was then revised by the Magistrate, as detailed in the Officiating Magistrate's grounds of commitment in the Calendar; prisoners have not pleaded "autrefois acquit" but I may remark the course adopted by the Magistrate is not barred by the terms of Act XXXI. of 1841, heretofore as within ruled by the superior Court.

Nizamut Adawlut to Sessions Judge of Behar No. 47, 12th January, 1853, Para. 4. It may happen that a Magistrate overstepping his jurisdiction may acquit parties after trial before himself, in cases in which he ought to have made commitment to the Sessions. In those his trial and order being in themselves illegal may be set aside on that account and he may be legally held to pass a fresh order.

The main proof against the prisoners, generally rests on Gunnoo's own conduct and admissions. This admitted, there can be no reason to question the integrity of the recovery of the stolen jewels abstracted from the bundles, the valueless articles of which were left exposed to public view, whilst its valuables or the jewels were found concealed partly in Gunnoo's premises and partly by his family, the female prisoners, thus so conclusively established and further corroborated by all three prisoners' contradictory and inculpatory statements, guilty appropriation of stolen property in the first instance, naturally accounts for its guilty division and furtive concealment in four different ways, in the last, viz. by Jeecheea in two ways on the premises and under Madoo Gope's plantain trees and by Keolee on the premises and her person. Under the circumstances, I find it impossible to doubt

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Gunnoo's guilty silence about the stolen jewels when he first made his complaint at the thannah. There is the recorded complaint itself, No. 30, and that it was so much and no more is sworn to by its writer Roushunlal, witness No. 30, and Umritlal No. 31, subscribing witness and as much stands confirmed by Gunnoo's equivocal denial of it before this Court. I can thus only, view the valueless articles of the bundle left exposed before Gunnoo's shop and his subsequent complaint at the thannah, as an over-cunning blind in aid of his own thieving intentions. He has always admitted that he examined and saw the stolen jewels in the rice within the bundle, as alleged by him, left behind by the thieves, and thus he knew they were stolen, yet without regard to their value or, as he says, he himself having suffered from thieves the same night, he concealed all this in his complaint at the thannah and only mentioned it for the first time, when put on his defence after the recovery of the jewels as found in the possession of his own household. Apart too, from the three prisoners' contradictory and inculpatory statements which, as members of the same family, are scarcely entitled to separate consideration, Gunnoo's whole story in its most improved shape, is a lame one in itself full of gross improbabilities and from the extraordinary recovery of so much of the stolen valuables, the presumption under such circumstances is, that Gunnoo's connection with the burglary is closer than anything that has come out in evidence, Gunnoo's extreme cunning has over-reached itself. I convict all three prisoners on the 2nd count and sentence as follows.

Sentence passed by the lower court.—No. 1, to seven years' imprisonment with labor and irons in banishment to another zillah, and Nos. 2 and 3 each to three years' imprisonment with labor suited to their sex in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. G. Loch.) On the night of the 11th June, 1858, corresponding to the 15th Jeyth, 1263, F. S., a burglary was committed in the house of Gokool Sahoo. The next morning certain clothes were observed lying near the house of the prisoner Gunnoo Bhuggut and a charge of theft was brought against him at the thannah.

On the same night a burglary is alleged by Gunnoo Bhuggut to have been committed in his house, and he went to the Thannah to give his information and after it had been taken down in writing he was apprehended on the charge of Karoo Sahoo, prosecutor, guardian of Gokool Sahoo. His house was searched and his wife Jeecheea prisoner No. 2, and mother Keolee prisoner No. 3, produced silver ornaments which were identified by the prosecutor and were without doubt part of the property stolen from Gokool's house.

The account given by the prisoner Gunnoo Bhuggut as to the manner in which this property found its way into his pos-

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session is quite incredible. He states, that on being roused by the robbery having been committed in his own house, he went to the Etwary chuk muhula to tell his mother; that as he neared her house he saw some men making off, one of whom had a bundle and he tried to stop him. The one man threw down his bundle and ran off, the other knocked down Gunnoo Bhuggut and left him roaring for help. His mother came to his assistance as did also some Chowkeedars. He picked up the bundle which contained paddy in which were concealed the ornaments claimed by the prosecutor, and with the consent of the chowkeedars, he tied up the bundle and took it accompanied by his mother Keolee prisoner No. 3, and the chowkeedars to his own house and his mother taking the ornaments from the paddy concealed them.

The prisoner Jeecheea in her statement to the police, says that her husband and his mother brought home the property early in the morning, and the ornaments were divided into three shares of which Keolee took one share and then she, as instructed by Keolee, concealed the property part in the paddy and part under a plantain tree belonging to Modoo Gope.

The prisoner Keolee states, that she was roused by her son's cries before day light, and running out found him lying on the road, but saw no one else. He said his house had been robbed and that on his way to inform his mother, he had seen some suspicious looking fellows whom he had endeavoured to stop. One knocked him down and the other ran away leaving a bundle. On examining the bundle, which appeared to contain paddy, a quantity of ornaments were found concealed in it, which the prisoner Gunnoo no sooner saw, than he declared them to be his property. The chowkeedars were present at the time and accompanied by them and herself, Gunnoo returned home conveying the bundle with him.

On their trial, the prisoners plead *not guilty*. Gunnoo adhered to his former statement and called witnesses to prove that he was found lying in the road and the bundle near him. Jeecheea denied having delivered up or seen the ornaments; and Keolee adopting the story of Gunnoo as to the finding the bundle, declares that she did not see the ornaments, and that those found on her person had been surreptitiously placed there by Toolsee, witness No. 6.

The case was made over to the Deputy Magistrate having the full powers of a Magistrate for trial. As the value of the property stolen exceeded Rupees 100, he had not final jurisdiction on the case, but in case he considered the charge proven, must have committed the prisoners for trial to the Sessions Judge. He considered the charge not proven and acquitted the prisoners. The Magistrate sent for the record and considering the evidence already taken quite sufficient for conviction,

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committed the parties for trial, and they have been sentenced to different periods of imprisonment by the Sessions Judge.

Before disposing of the appeal preferred by the prisoners, I thought it advisable to settle one apparent objection to the proceedings, and I accordingly submitted the following questions for the opinion of this Court. 1st, Whether when an officer exercising the full powers of a Magistrate, after hearing evidence against the prisoners charged with a crime beyond his competency to punish, may, on the ground of the insufficiency of that evidence for the conviction of the accused, direct their acquittal, another officer exercising concurrent jurisdiction, forming a different estimate of the credibility of such evidence, can, without taking any fresh evidence, revise those proceedings, and setting aside the order of acquittal commit the accused to the Sessions for trial; 2nd, whether in the event of the incompetency of one officer to set aside without additional evidence, an order of acquittal recorded by another officer having concurrent jurisdiction, the commitment made by the former and the conviction of the prisoners by the Sessions Judge can be considered legal. On the first question, the Court held that a Magistrate had the power to revise the proceedings of the Deputy Magistrate which were only preliminary, relating as they did to a case in which the Deputy Magistrate had not final jurisdiction, and that he had consequently power to commit the prisoners for trial. An answer to the second question was therefore unnecessary.

I think there is no doubt as to the guilt of the prisoners and that they had been rightly convicted of having in their possession stolen property, knowing it to have been stolen. The prisoner Jeecheea, however, is the wife of the prisoner Gunnoo Bhuggut and can scarcely be said to have acted independently in the matter. She appears from the record, to have obeyed the instructions of her husband and his mother, and under such circumstances she should not have been punished. I therefore direct that she be acquitted. The complaint of theft brought by Gunnoo was probably intended as a ruse to escape suspicion, and what appears to render this more probable is his silence regarding the seizure of the ornaments from the thieves, a fact which he altogether omits to mention in his depositions to the police. As, however, he has never been before convicted and there is nothing particularly atrocious in this robbery, I think the sentence of seven years' imprisonment in banishment passed upon him by the Sessions Judge unnecessarily severe, and I reduce it to four and confirm the sentence passed on Musst. Keolee.

PRESENT:

E. A. SAMUELLS, Esq., *Judge.*

GOVERNMENT AND ANOTHER

versus

BHULLA GAZI (No. 1,) FELLA GAZI (No. 2,) ASHRUFF ALI (No. 3,) AND SHUFFERUDDEEN (No. 4.)

Tipperah.

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Prisoner finding deceased in the act of criminally assaulting his wife, struck him a blow, which fractured his skull. He and the other prisoners then dragged deceased to a deserted tank and flung him down there, leaving him to die. The blow inflicted on deceased was considered justifiable, and the exposure was declared by the medical officer not to have had any effect on the fatal result. Looking to the inhumanity of the prisoners' conduct, however, the Court sentence them for the assault

CRIME CHARGED.—Prisoner No. 1, wilful murder of Zuheeruddeen brother of the prosecutor, Nos. 2 to 4, 1st count, accessaries both before and after the fact of the above murder; 2nd count, privity to the above murder.

Committing Officer.—Gholam Hossein, Deputy Magistrate with full powers.

Tried before Mr. H. C. Metcalfe, Sessions Judge of Tipperah, on the 6th July, 1859.

Remarks by the Sessions Judge.—This case, as developed by the confessions of the accused and the evidence of the witnesses for the prosecution, is as follows.

The deceased was a zemindaree peon, who has been in the habit for some years past, of visiting the village in which the prisoners reside whenever his employer, Burnee Khanum, had occasion to communicate with her tenants. The prisoner Bhulla Gazi (No. 1,) practices as a Koberaj or Doctor, in cholera cases, and is frequently from home in prosecution of his profession, returning at unexpected moments. The deceased came to the village on the 13th May and calling at the house of the prisoner Bhulla Gazi (No. 1,) enquired regarding him. His wife, the witness Sreemuttee Nobee (No. 1,) replied that her husband was from home, and the deceased went about his business without further remark. The witness Sreemuttee Nobee (No. 1,) took her usual evening meal and went to sleep with three children by her side. Her story of what subsequently occurred, differed materially in the Sessions Court from her statement on the same subject in the Court of the Committing Officer. In the former, she deposed that the prisoner entered the room in which she was lying asleep, and took forcible possession of her person, and that her husband returning home at the moment struck him, while still lying on her person, on the head with a *lattee.* In the Court of the Committing Officer she stated, that the deceased becoming aware of her husband's presence, rose from his position on her body, and endeavoured to make his escape when her husband struck him while on the threshold of the room. I believe the latter to be the true version of the story, as blood was found on the threshold, and none on the bed or on the persons or clothing of the woman and

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in seizing the deceased and dragging him to the tank, to imprisonment with labor for one year.

the three children who were sleeping by her, which would inevitably have been the case had the fatal blow been struck while the deceased was in such close contact with the witness Sreemuttee Nobee (No. 1.) It is also in accordance with the confession of the prisoner Bhulla Gazi (No. 1,) and with the statements made by him to his neighbours. It appears that the deceased, although life did not become extinct until the following day, never rose or spoke after he was struck, the blow having caused concussion of the brain. The prisoner Bhulla Gazi (No. 1,) aided by the prisoners Fella Gazi (No. 2,) Ashruff Ali (No. 3,) and Shufferuddeen (No. 4,) shortly afterwards dragged the deceased, still living, to a solitary tank about 393 yards from the house and there left him to die. Here he lay until the following day when the village Chowkeedar received information of what had occurred and proceeding to the tank, found the unfortunate man still breathing. An attempt was made to convey him to the thannah, but he expired on the way. The Chowkeedar's statement of the manner in which information of the occurrence of the previous night was conveyed to him, is not reconcilable with the confessions of the prisoner Bhulla Gazi (No. 1.) He stated that the prisoner Bhulla Gazi (No. 1,) informed him that while he was absent from home the deceased had entered his house and attempted to violate his wife, and that Fella Gazi and some other neighbours had interfered and pursuing the deceased to the tank had there put him to death. But the prisoner No. 1, on apprehension unhesitatingly stated that he had detected the deceased attempting to violate his wife, and that the blow to which his death was attributable was inflicted by *his* hand, his fellow-prisoners subsequently assisting him in dragging the wounded man from the homestead to the tank. It is not easy to account for this discrepancy. It is possible, however, that the prisoner Bhulla Gazi (No. 1,) *did* make to the Chowkeedar the statement attributed to him by the latter, and on after-reflection relinqished the story as unlikely to benefit him, for no reason is apparent why the Chowkeedar should have desired to save the prisoner Bhulla Gazi (No. 1,) at the expense of others and the sacrifice of truth. The discrepancy I have already noticed between the two statements of the wife of prisoner Bhulla Gazi (No. 1,) witness Sreemuttee Nobee (No. 1,) is, I have no doubt, attributable to her having been instructed between the dates of her examination by the Committing Officer and by myself, that her husband's chance of escape from punishment would be much aided, if it could be shewn that he detected the deceased in the very act of violating his wife, and struck him on her person.

The Medical Officer, Doctor Graham, attributed the death of the deceased to fracture of the skull and consequent concussion of the brain. He found it difficult to believe that the

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injuries thus described could have been caused by a *lattee* of the description shown him (a rather light bamboo stick) and was more disposed to infer that some heavy cutting instruments such as a *dao* had been used. But he added, that it was not impossible that the fracture might have been caused by a knot in the *lattee* alludded to.

The remaining evidence was that of neighbours who came to the house of the prisoner Bhulla Gazi (No. 1,) after the deceased had been struck to the ground on which they saw him lying in a state of insensibility.

The prisoner Bhulla Gazi (No. 1,) stated in his confession, that returning home unexpectedly and late at night, from attending a patient ill with cholera, he heard his wife and some children screaming and calling for help. On entering the house he found the deceased and his wife struggling together on the bed and in a short conflict with the deceased, at the threshold struck him on the head with the *lattee* produced in Court, and thus caused his death on the following day.

The prisoners Fella Gazi (No. 2,) Ashruf Ali (No 3,) and Shufferuddeen (No. 4,) appear to have been received as witnesses in the lower Court, and to have been examined in the first instance as such on solemn affirmation. Subsequently the Committing Officer, discovering their real position, made defendants of them and their confessions are annexed to the record. These confessions are to the same effect and purport. They found the deceased lying in the homestead of the prisoner Bhulla Gazi (No. 1,) from whom they heard what had taken place, and they assisted in dragging him away to the tank while yet living.

The defence of the prisoners was, in accordance, with their confessions. The prisoner Bhulla Gazi (No. 1,) stated that he struck the deceased on the head, in consequence of finding him in the act of violating his wife, after having been himself struck by the deceased. He added that with the assistance of the prisoners Fella Gazi (No. 2,) Ashruff Ali (No. 3,) and Shufferuddeen (No. 4,) (who admitted having given that assistance) the deceased was dragged away to a neighbouring tank and there left, although still living.

The light in which the case strikes me is this. There can be no doubt I think, that the history given by the prisoner Bhulla Gazi (No. 1,) of the circumstances which led to his striking the deceased, and thus subsequently causing his death, is strictly true. But though his conduct was thus far justifiable, I regard his subsequent treatment of the unfortunate deceased with extreme dissatisfaction. Although perfectly aware that life was not extinct, he, with the assistance of the prisoners Fella Gazi (No. 2,) Ashruff Ali (No. 3,) and Shufferuddeen (No. 4,) who were equally aware that the deceased was still

alive, dragged the yet living and breathing man to a deserted tank, and there left him to linger throughout the night and part of the next day. The medical officer deposed that the injuries from which the deceased died were past all remedy from the moment of their infliction. But the prisoners could not know this, and may well be supposed on the contrary to have believed that timely aid might have been of use to the wounded man. Instead of rendering him any assistance, or treating him with common humanity, they pitilessly dragged him away to a secluded spot, where the great wonder is, that he was not mangled and devoured by leopards or jackals before life became extinct in consequence of the injury he had undergone at the hands of the prisoner Bhulla Gazi (No. 1.) Such conduct appears to me to be so barbarous and unexcusable, that great as the provocation was, which led to the assault on the deceased by the prisoner Bhulla Gazi (No. 1,) I do not think that he or his fellow-prisoners should escape unpunished for their conduct after the deceased was lying helpless and dying before them. The right of aggression with which the conduct of the deceased vested the prisoner Bhulla Gazi (No. 1,) ceased to exist when the former had been mortally wounded and was reduced to a state of perfect helplessness and insensibility. It was not in defence of the honor of his home, or in the excitement of natural and justifiable passion, that the prisoner, after a considerable period had elapsed, consigned the deceased to solitude and desertion when his state ought to have excited, however much in error he had been, some degree of commiseration. It is, as I have already observed, quite wonderful that he was not destroyed during the night by wild beasts, and, than this, a more shocking fate cannot easily be imagined.

Under these circumstances, I cannot regard the case as one of purely justifiable homicide, or agree with the Law Officer in releasing the prisoners without some punishment. Adverting to all the facts I have narrated and giving due weight to the circumstances under which the prisoner Bhulla Gazi (No. 1,) struck the fatal blow, I would still under the circumstance of his subsequent heartless and inhuman treatment of the deceased, sentence him to imprisonment for two years with labor commutable by payment of a fine of Rs. 100, within a reasonable period. I would convict the prisoners Fella Gazi (No. 2,) Ashruff Ali (No. 3,) and Shufferuddeen (No. 4,) (under the same view of the case) as accessaries after the fact and sentence them to imprisonment for one year with labor commutable by payment of a fine of Rupees 50 each.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The Judge does not say of what crime he proposes to convict the prisoners. The deceased, it appears, died from the effects of the blow received at the hands of the prisoner

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Bhulla Gazi, when attempting to escape from the house. This blow, however, is proved to have been justifiable and the medical evidence goes to show that the treatment which the deceased subsequently met with, had no effect on the fatal result. It follows that the prisoners cannot be convicted either of culpable homicide or of being accessary to such homicide. I agree with the judge, however, that the inhuman conduct of the prisoners in throwing the deceased out to die in a solitary place, doubtless with the intention of concealing the act of the prisoner Bhulla, and evidently with a callous disregard of the consequences to the deceased, is a serious offence, and should not be allowed to pass without exemplary punishment. If there is any difference in the guilt of the prisoners, it is in favor of the prisoner Bhulla, who had been so deeply wronged by the deceased and whose passions were naturally aroused. The others had no excuse for their brutal conduct whatever. Bhulla, however, was the principal, and I do not therefore consider it necessary to make any distinction in the punishment which I shall award.

I convict all the prisoners of assault in seizing upon the deceased when severely wounded, dragging him to a deserted tank and there throwing him down, and sentence them each to one year's imprisonment and 100 Rs. fine in lieu of labor.

REGULAR CASES.

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REGULAR CASES.

SEPTEMBER 1859.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge*.

East Burdwan.

1859.

September 9.

Case of KISTO MOOCHEE.

GOVERNMENT AND ANOTHER *versus* KISTO MOOCHEE.

The prisoner charged with administering a lump of arsenic of the size of a small cowree to his nephew, a child of two years of age, was acquitted owing to discrepancies and improbabilities in the evidence, and especially to the fact that the child, when seen by a medical man five days after the alleged poisoning, was lively and healthy, and that the Civil Surgeon deposed, that the arsenic produced did not appear to have been in the stomach of any person.

CRIME CHARGED.—Intentionally administering poison to Raghub Chokra to cause his death.

Committing Officer.—Mr. H. S. Thompson, Principal Sudder Ameen with full powers of Magistrate.

Tried before Mr. C. P. Hobhouse, Officiating Sessions Judge of East Burdwan, on the 19th August, 1859.

Remarks by the Officiating Sessions Judge.—The prisoner, Kishto Moochee, is committed on the charge of intentionally administering poison to one Raghub Chokra in order to cause his death. He pleads "*not guilty*" to the charge.

The evidence of the prosecutrix, Hurro Moocheenee, goes to prove that between 10 and 11 A. M. of the 28th Assar, corresponding with the 11th July last, she went out to purchase some food, leaving her child of two years old, the above Raghub, in her house; that she returned home not long, she cannot say how long, afterwards and found the child in the verandah of her house vomiting and purging; the stuff vomited being in one portion about the size of a pea and in other smaller portions, and all of a white color, and being arsenic *(bish)*, she suspected and the purging being in substance like water mixed with blood; that being told by her daughter, witness No. 5, that Raghub had eaten rice at prisoner, his uncle's house, quite close by, she went to prisoner and asked him what he had done to her son; that prisoner told her two stories,—one that some rats had bitten and dropped some poison, he did not say what poison, from the roof on to the floor of his house and that the child Raghub had eaten it; and the other, that he had put some poison out in the verandah of his house to dry, and that the child had eaten it; that subsequently witnesses Nos. 1 and 2, told her the story which will be detailed hereafter in their evidence; that she then by witness No. 6, gave information against prisoner to the Gomastah, one Siroo Holdar, who referred her to the Talookdar, one Tara Chund Bose, who gave intelligence to the police, who held an investi-

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gation in her house the next day 29th Assar, 12th July, about 11 in the morning.

In answer to questions put by the Court, the prosecutrix further deposed that prisoner was the elder brother of her late husband Surroop; that her husband deceased in Pous last; that he was the only brother of prisoner; that she is not now in the family way, but has one son, the boy Raghub, and three daughters by her late husband; that between her husband and also between herself and prisoner, quarrels have always been rife about certain shares in shoes furnished to the village Gomashta, and about the privilege of providing people to dance and sing at the festival of Sheo idol, and about their joint Habilee, and about taking the skins of dead animals; that besides the white stuff the child vomited "*chaoul*" and that he got better about 2 A. M. in the night of the vomiting, and that before the Principal Sudder Ameen she had identified the white stuff vomited by the child.

Witness No. 5, who is the daughter of the prosecutrix, deposes that about 10 or 11 A. M. of some day in Assar, the child Raghub went of his own accord crying to the prisoner's house; that shortly after she went to fetch him back; that she then saw him eating rice with prisoner, the child sometimes feeding himself and sometimes being fed by prisoner, and that she called him to her; that prisoner said, "let him stay, he is eating rice;" that she then went back to her mother, the prosecutrix's house; that shortly after Nidoo, the nephew of the prisoner, brought the child back in his arms and placed him in the south verandah; that the child immediately began to vomit and purge; that the vomited stuff was of a white color, but she could not tell what substance it was, but she identified it before the Principal Sudder Ameen; that just then her mother, the prosecutrix, returned and she told her how the child had eaten rice in prisoner's house; that her mother called prisoner, and on his coming to her house asked him what he had done to the child, but that she does not recollect his answer.

Witnesses Nos. 1 and 2, the one the son-in-law and the other the son of prisoner, both unusually intelligent men of their class in life and giving their testimony readily, unvaryingly and otherwise in a most satisfactory manner, depose as follows:—that between 10 and 11 A. M. of the 28th Assar, they were eating "*chaoul*" in prisoner's house, they two eating together and prisoner by himself; that they had just finished eating and prisoner was still so employed, when the child Raghub came in; that prisoner gave the child some "*chaoul*" in the half of a cocoa-nut rind; that while he was doing so, witness No. 5, came and called the child, but that prisoner said, "let him stay, he is eating *chaoul*;" that shortly afterwards, prisoner went

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into the house and brought out some white stuff about the size of a small cowree and put it into the child's hand and that the child put it into his mouth; that then by prisoner's order, Nidoo, a boy of seven or eight years of age, took the child over to the prosecutrix's house; that, immediately after, prosecutrix came over to prisoner's house, crying, and asked him what he had done to her child; that they did not hear any reply of prisoner's, but that they went with him to prosecutrix's house and saw the child, Raghub, in the act of vomiting some white substance, they could not tell what, about the size of a small cowree, and *they recognized it as the substance that prisoner had given to the child, and identified it again as the substance produced in the Court of the Principal Sudder Ameen;* that prosecutrix then gave information against prisoner before the Gomashta Siroo Haldar.

But these witnesses on being questioned by the Court, deposed that they themselves had never been on any but friendly terms with the prisoner, but that there had for long been a brother's quarrel between prisoner and the prosecutrix's husband, and witness No. 1 specially deposed that he did not usually live with prisoner, but had arrived the morning of the 20th of Assar on a visit, and witness No. 2 specially deposed that he lived with his father, the prisoner, and that the prisoner sometimes prepared medicine *(duwa)*, but he could not say whether or not prisoner had usually arsenic in the house.

Witnesses Nos. 6 and 7, both of whom are related to both prisoner and prosecutrix and one of whom No. 7, gave his evidence with a decided bias towards prisoner, depose to being present at the house of prosecutrix at the time when the child Raghub was vomiting and purging; to the having seen then and identified afterwards at the Court of the Principal Sudder Ameen, the white substance vomited, and to the facts of disputes being rife between prisoner and prosecutrix, and of prisoner's being the only male of kin to the boy Raghub, and of their not being personally mixed up in the disputes rife.

Nos. 3 and 4 are witnesses to the *suruthal,* which was held and written by the Darogah, on the 29th Assar, corresponding to the 12th July, partly in the house of Ram Mundul, and partly in those of prosecutrix and prisoner.

The *suruthal* declares that no poison was found on searching the house of the prisoner; that the child Raghub was seen hanging to his mother's breast, tossing as in pain or fever, with his eyes swollen and himself inert as if half insensible; that two pieces of poison of a white color, but not identified as any particular poison, wrapped in leaves, were produced by the prosecutrix and made over to the Darogah, as the substances vomited by the child Raghub, that the child was described to have been continually in the above mentioned state ever since

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the vomiting of the day before, and that the prisoner was reputed in the village as a person suspected of poisoning cattle for the sake of their skins.

The witnesses Nos. 3 and 4, identified before the Principal Sudder Ameen, the substances there produced in Court as those they had seen at the *suruthal* as delivered to the Darogah and examined by themselves.

From a letter, filed in the *Nuthee*, of the Sub-Assistant Surgeon, of date 18th July, it would appear that either on that day or on the 16th July, (most probably on the 18th July, because the child was not even ordered to be sent in for examination before the 15th July, a grave oversight on the part of the Police, who should not have waited for the order of the Magistrate, but should have sent the child in at once to be examined) the child was examined by that Officer, this would be five or seven days after the occurrence, and was found to be quite lively and free from any symptoms of poisoning, and the Sub-Assistant Surgeon had doubts as to whether the child had ever been poisoned at all; he does not however state the foundation of these doubts, and he was not, as he should have been, summoned as a witness on this point.

Witness No. 9, Dr. Williams, the Civil Surgeon, deposes as follows: that on the 18th July, he received two small portions of a substance wrapped in leaves from the Principal Sudder Ameen, which he believed from their appearance to be pieces of crude arsenic; that the larger of these substances did not appear to have passed into the stomach, but that the smaller might have done so, and might have remained there sufficiently long to produce vomiting and other symptoms of irritation such as pain and purging; that, not having, as he explained, but as I did not think it necessary to write down, any sufficiently accurate instruments with him for a proper chemical analysis, he sent the substances to the chemical examiner in Calcutta; that in the chemical examiner's reply, No. 86, 18th July, (filed) he stated the substances to be arsenic, the largest portion weighing upwards of five grains; that had a child of two years of age swallowed either of the substances, death would have ensued; that the child Raghub produced in Court appears healthy.

In answer to special questions put by the Court, this witness stated that the purging which would follow the partaking of arsenic would probably have been of a waterish, slimy nature; not improbably mixed with blood; that he believed that natives sometimes used arsenic for cutaneous diseases, and that tossing about as if in pain or fever, remaining with the eyes swelled, and as if somewhat insensible, were not positive signs of the swallowing of arsenic, but were such as were not unlikely to have occurred, had arsenic been taken.

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The prisoner simply denied the crime charged when before this Court. Before that of the Principal Sudder Ameen he stated in his defence, that one Goburdhun Moochee was suffering from a (cutaneous ?) disease called *goorgooree*, and that he had been about to apply some arsenic to him externally, and had put some out to dry for that purpose in the sun, when the child Raghub took it up and ate it. He declined, however, to summon any witnesses in support of this story.

The Jury, Ramdhun Mookerjee, Zohad Ruheem and Zohad Ali, Pleaders, concurred unhesitatingly, in finding the prisoner guilty of the crime charged, and to this verdict I as unhesitatingly agree.

There is as against the prisoner,—

First, the motive to the crime, viz. the quarrel which had for long been going on between him and the prosecutrix's husband and after her husband's death, the prosecutrix herself, and the fact that the boy Raghub was the only obstacle, at least during prisoner's lifetime, for he is a man between forty and fifty, at once to the putting an end to the quarrel and to his obtaining the objects about which the quarrel was current.

Secondly, the actual commission of the crime.—Two unexceptionable witnesses, Nos. 1 and 2, his own son and son-in-law, saw him eating *chaoul* with the child, saw him go inside his house, fetch out some white substance, other than the *chaoul* with which he was feeding the child, put it into the child's hand and saw the child put it into his mouth, saw the child vomit out the identical substance that the child had put into its mouth, and identified that substance as that produced before the Magistrate's Court.

Thirdly, the malice.—The prisoner, while the child was eating, put a substance which all natives and Moochees specially know to be a deadly poison into the child's hand; that substance is proved to have been arsenic, and in such a quantity that the smallest portion vomited would, if retained in the stomach, have produced death in the child.

I would therefore convict the prisoner of administering poison to the child with intent to kill it, and the prisoner's crime appears to me to have been aggravated by the facts of the child's tender age, and of prisoner's being the child's natural guardian rather than, as he has proved himself, his unnatural enemy, and I would sentence him to the severest punishment the law provides, viz. Imprisonment with labor in irons in banishment for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) This crime is said to have been committed on the 11th July, in the forenoon. Information was not given at the Thannah, however, until the 13th, and it was not until the 14th, that the local enquiry was held by the Police. The

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child was then suckling its mother, but it is stated to have writhed as if in pain, and the eyes were red and swollen. On the 16th, when first seen by the Sub-Assistant Surgeon, the child was lively and healthy and presented no appearance of having been poisoned.

It is not clear from the evidence how long a period elapsed between the act of administering the poison to the child, deposed to by two of the witnesses, and its expulsion from the child's stomach; but as the child is said to have gone over to the prisoner's house at one-half *puhurs* of the day and to have returned at two *puhurs*, and it had apparently been some little time in the prisoner's house before the poison was administered, the interval may be taken at from half an hour to three-fourths of an hour.

I had some doubts, when I first perused the evidence, whether the symptoms described by the witnesses could have resulted from the retention in the child's stomach, for so short a time, of a lump of arsenic weighing five grains which is stated by the witnesses who saw it given to the child to have undergone no apparent alteration when vomited; and whether, supposing the poison to have taken such effect as to produce bloody stools, and swollen and inflamed eyes, the child could have been in the excellent health, it undoubtedly exhibited five days afterwards.

On consulting an eminent physician of this city, however, I find that there is nothing improbable in the evidence on this point. The effect on the bodily health of the child of swallowing a lump of arsenic, which was ejected from the stomach in the course of half an hour or an hour, may possibly have been what the witnesses describe.

There are nevertheless improbabilities and material discrepancies in the case, which have induced doubts in my mind as to the prisoner's guilt, and these doubts have been strengthened on a reconsideration of the case.

The only direct evidence against the prisoner is that of his son and son-in-law. Assuming that the child went as stated to the prisoner's house, that he did swallow arsenic, and that the symptoms mentioned by the witnesses supervened, their's is the only evidence which supports the conclusion, that the poison was administered by the prisoner, and was not taken accidentally.

Now, in considering this evidence, we are met in the first place by the great improbability of the prisoner who lives in the same homestead with the child, and must have had many opportunities of giving him arsenic unobserved, if he had been so minded, presenting it to him in the presence of the two witnesses, and that so openly that they were both enabled to observe accurately the form and appearance of the lump given, so as to recognise it when it was vomited by the child.

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Next, it is a suspicious circumstance that, seeing this lump so distinctly as they did, from a distance of only four or five cubits, they should not have recognised it at once to be arsenic, a substance well known to natives of their class; and that they should not in any case have questioned the prisoner as to what he had given to the child.

Then, it seems very unlikely, if the prisoner had intended to poison a child of two years of age, he would have given him the arsenic in a lump, instead of reducing it to powder and mixing it with the rice he was eating. The probabilities were greatly against a child of that age swallowing a solid lump of a substance so acrid as arsenic. His natural tendency, if he sucked it, or bit it, would be to spit it out.

In the Judge's abstract of the evidence of the two eye-witnesses the prisoner is said to have detained the child, when its sister came for it, to have administered the poison after she had left, and then to have sent the child over to its own house. Had this been so, it would have told materially against the prisoner, as it would then have appeared that he had detained the child for the purpose of administering the poison; but I find, on reference to the evidence of these witnesses, that Teencowree does not say whether the sister came before or after the poison was given; and that her visit is said by Nudeear Chund to have been subsequent to the administration of the arsenic. The fact, therefore, that the prisoner did not at once allow the girl to remove her little brother, after he had, on the theory of the prosecution, effected his purpose, is a circumstance in his favor.

There is a most serious discrepancy as to the arsenic administered and the arsenic vomited. The eye-witnesses state distinctly that the prisoner went into his house, and brought out *one* piece of some white substance of the size of a small cowrie, and gave it to the child. Their evidence is otherwise quite inconsistent with the supposition that he could have given more; but the prosecutrix says that the child vomited *several pieces* of a similar substance; and she produced two of these pieces, one of which was sworn to by the eye-witnesses, as the piece they had seen administered.

No attempt seems to have been made to reconcile this discrepancy; yet if the child had really swallowed the quantitiy of arsenic described by the mother, it seems certain that it could not have been in good health, when seen by the Sub-Assistant Surgeon five or six days afterwards, and the probability is, that it must have died.

The absence of all appearance of having suffered from a poison like arsenic so shortly after its alleged administration, and the opinion of the Civil Surgeon who deposes that the piece of arsenic pointed out by the witnesses, as that which had

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been administered, did not appear to him to have been in the stomach of any person, are also both very strong points in the prisoner's favor.

The readiness with which the son and son-in law of the prisoner are stated by the Sessions Judge to have given their evidence, has not, I confess, impressed me with a conviction of its truth. My experience is rather that near relatives of a prisoner, who have no motive to desire his removal, are not likely to give evidence readily against him. I cannot but suspect that the witnesses are more in the interests of the prosecutrix than in those of the prisoner.

The enmity between the two parties just named, and the family quarrels which supply the prosecutrix with a motive for the prisoner's crime, will also suggest the possibility of the prosecutrix having taken advantage of some accidental illness of the child to fix this charge upon the prisoner, and having induced the witnesses to support her.

The Darogah and the witnesses to the *suruthal* who saw the child three days after the alleged poisoning, describe its appearance to be that of a person who had been drinking. They saw no traces of vomiting, and no arsenic was found in the prisoner's possession. Their evidence does not lead, with any certainty, to the conclusion that the child was suffering from the effects of arsenic.

The strongest point against the prisoner is, the statement he made to the Police, and to the Principal Sudder Ameen, Mr. Thompson, that he had put some arsenic, which he had intended to have made into a medicine for external application, in a case of itch, out to dry; and that the child had probably eaten it up; a story which he did not attempt to support by evidence, and which he abandoned in the Sessions Court.

There is no doubt that this statement, false as we must suppose it to be, is highly suspicious; and it has induced me to re-consider the evidence more than once: but it is quite possible that upon finding it asserted, that the child had been poisoned with arsenic in his house, the prisoner may stupidly have invented the story, as a mode of accounting consistently with his own innocence, for what was said to have happened. Independent of this, the delay in reporting the case at the Thannah, and presenting the child for examination, together with the medical opinions which have been recorded, and the serious improbabilities and discrepancies apparent in the witnesses' statements, have created such serious doubts of the prisoner's guilt in my mind, that I find myself unable to concur with the Sessions Judge and the Jury in convicting him. He must, therefore, be acquitted and discharged.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge.*

GOVERNMENT AND ANOTHER

versus

BAGA KHAN *alias* MAJUM ALEE KHAN, (No. 1,) LAL KHAN, (No. 2,) MOOLOOK TAGADGEER, (No. 3,) MOHOBUTOOLLAH SHEIKH, (No. 4,) BALUCK SHEIKH, (No. 5,) KORIM KAREEGUR, (No. 6,) SHONAOOLLA CHOWKEEDAR, (No. 7,*) KODUM TAGADGEER, (No. 8,) JOMUN SHEIKH, (No. 9,*) GOOMANEE SIRDAR, (No. 10,) PACHOO SIRDAR, (No. 11,) BORUM SHEIKH, (No. 12,) KANTA KARIGUR, (No. 13,*) AND MADHOO *alias* MEGHA KARIGUR, (No. 14.*)

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The prisoners, who had gone forth with deadly weapons for the purpose of attacking a village, and had killed one of the villagers, were convicted of wilful murder and sentenced to various terms of imprisonment. Remarks on the impropriety of employing two burkundazes to prevent an indigo affray, and the Court's opinion expressed and communicated

CRIME CHARGED.—(No. 1,) 1st count, wilful murder of Plaintiff's husband Mymen Sheikh; 2nd count, being concerned in an affray in which Mymen Sheikh was killed, Ketabdee and Sadoollah wounded, and the cattle of the Gabgachee villagers, viz. Shohur Akund, Bhyrub Pramanick, Amanea Fokeer, Ram Doss Pramanick, Anund Sircar, Ramhurie Chung, Kissen Mohun Pramanick, Ram Chunder Pramanick and Abeer Mundul, plundered. Nos. 2 to 14 being concerned in an affray in which Mymen Sheikh was killed, Ketabdee and Sadoolla wounded and the cattle of the Gabgachee villages, viz. Shohur Akund, Byrub Pramanick, Amaneea Fokeer, Ram Doss Pramanick, Anund Sircar, Ramhurie Chung, Kissen Mohun Pramanick, Ramchunder Pramanick and Abeer Mundul, plundered.

Committing Officer.—Mr. C. F. Harvey, Assistant with powers of Joint-Magistrate in charge of the sub-division of Serajgunge.

Tried before Mr. Lowis Jackson, Sessions Judge of Rajshahye, on the 15th July, 1859.

Remarks by the Sessions Judge.—The case is one of those agrarian outrages not, unhappily, very uncommon in the district, but in this instance deplorable alike from its apparent origin, and from the fatal result.

It appears that Mr. William Cockburn was proprietor of the Challa concern, Thannah Shabzadpore, in the sub-division of Serajgunge.

Not far from the factory of Challa is the village of Gabgachee owned by several proprietors; Mr. Cockburn holding in farm a share of one of them.

* Acquitted by the Lower Court.

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Mr. Cockburn, it seems, required for the purposes of his indigo cultivation, the ploughs of the Gabgachee people; and as they were unwilling to give that accommodation, endeavoured to take it by force. The Assistant in charge of Serajgunge, who committed the prisoners for trial, has quite inaccurately observed that it was sought only to make the villagers work out the advances they had received, but it appears quite conclusively, not only from the evidence of the witness, but especially from the confessions of some of the prisoners (Mohobutoollah *alias* Mufta, and Baluck), that the Gabgachee people were not under advances, and that consequently there was no semblance of right to compel the use of their ploughs.

to the Lieut.-Governor that parties of military Police should, when available, be employed on duties of this description.

The Court did not concur in the censure cast by the Sessions Judge on the Magistrate for not committing the Indigo Planter to take his trial before the Supreme Court.

The facts which the evidence appears to establish are these,— that, on the forenoon of Wednesday the 23rd March last, as several of the Gabgachee people were at work ploughing their fields to the South of the village, a considerable body of men, one hundred or more, were seen approaching armed from the direction of the factory. Some four or five of these men came up to within a little distance, and asked the villagers whether they would give the use of their ploughs or no. They said they would not, some of them adding that they had already supplied them with ploughs on several occasions, without receiving payment, and were then engaged in their own cultivation.

The men (Sirdars) then replied they would have to give the ploughs, whether they liked it or not, and it is said these went to report the result to their employer, who was at a little distance (about two hundred and fifty yards off) on horseback. The witnesses go on to say that Mr. Cockburn, being apparently excited by the refusal, used abusive language towards the villagers, and after ordering his men to plunder the place, and "*mar*" the people, rode off towards his factory.

This may be the proper place to observe that the Assistant Magistrate, who went in person to the spot, considers it certain that Cockburn was not upon the ground, first, upon certain discrepancies in the evidence (which he has not specified), and second, because from actual inspection he was unable to discover in the locality indicated any horse hoof prints; and I think it my duty to remark that, in the first place, in default of actual evidence to the point, it does not appear why horse's hoof marks should have been observable on the ground after twenty-four hours had elapsed, in the latter end of March; and, in the next place, if there is any one point on which the evidence for the prosecution seems to agree more than upon another, it is as to the fact of Mr. Cockburn having ridden to within a short distance (two or three hundred yards) of the village lands, received the report of his messengers, and then, after showing signs of anger, and giving certain orders to his

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men there assembled, having gone away to his factory, on which the affray began. To this point I shall have occasion to recur presently; but I must say, that if the statements of the witnesses on this head should be deemed utterly without foundation, as they have been considered by the Assistant Magistrate, it will be impossible to place reliance on any part of their story, and the prisoners will, in my judgment, be entitled to an acquittal.

Immediately on receiving these directions the Sirdars, previously assembled, began to shout "*Kali! Kali!*" and made towards the village; the Gabgachee men most of them ran off, some of them first loosening their oxen from the ploughs, and some leaving them as they were.

A few, amongst whom were Monim, Ketabdee and Sadoolla Fakeer, offered some sort of opposition, by standing and protesting against the attack. The Assistant Magistrate conceives that the villagers threw clods at the assailants, and it is not impossible that they may have armed themselves for resistance, but there is no evidence of the fact; and at all events it is certain that none of the *latyals* were hurt, while on the other hand the three men last mentioned, were all wounded by means of *surkis*, or light spears; Ketabdee and Sadoolla slightly, one in the fleshy part of his thigh, the other in the palm of his hand; but the third, Monim, received in the first place a wound in the abdomen which was fatal. He turned and fled a short distance, his course being marked with blood, but was overtaken, and received another wound in the back, close to the shoulder-blade, which brought him down, and the *latyals* coming up, inflicted a third and then other wounds: the rest escaped.

After this, some plunder seems to have taken place, though the evidence is not satisfactory as to this; but undoubtedly the most part of the cattle of the village, upwards of one hundred head were driven off to the factory, whence they, or part of them, were taken to the thannah pound of Shabzadpore, under one or more *challans* said to bear Mr. Cockburn's signature, and were afterwards claimed and recovered by their owners.

When the aggressors retired, the villagers came back, and some of them went to the assistance of Monim, who was found by his cousin Jeetoo Sheikh (witness No. 15) nearly prostrate upon his face and knees, evidently dying. He was taken back and carried to his house, where after some inarticulate or barely articulate attempts at speaking, and after taking a little water, he almost immediately died.

It is stated by Jeetoo, also by the prosecutrix, widow of the deceased, and by his mother Chundra Bewa (witness No. 36) that with his dying breath Monim declared, that he had received his mortal injuries from Baga Khan and Lal Khan (prisoners Nos. 1 and 2) at the command of Cockburn, but I find it impossible to place any reliance on this statement.

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The friends of the deceased then prepared to carry his remains to Serajgunj, and after an altercation with two burkundazes who sought to make them proceed by a road which lay through the factory lands, (with the purpose, as they conceived, of getting the body into Mr. Cockburn's power), they carried their point and reached Serajgunj that evening. Their information reached Mr. Harvey, the Joint-Magistrate, and the body was subjected to medical examination, the result of which is detailed in the evidence of Luchmun Geer, the native doctor, witness No. 32, and leaves no doubt of the manner in which the deceased came by his death.

There has been in this case no investigation by the Mofussil Police. Mr. Harvey having gone in person to the scene, where he arrived early the next morning and at once entered upon his enquiries, which have resulted in the commitment of the prisoners, of whom four have been acquitted by this Court in concurrence with the Law Officer.

As to the remainder of the prisoners, the evidence appears ample for conviction; in the case of Goomanee alone, the identification is slight, and might not probably suffice, if it were not most strongly confirmed by his own confession recorded before Mr. Harvey, the Assistant Magistrate, to which of course the Court will refer as it accompanies the record.

Before me the prisoners have all pleaded *not guilty*, and for the most part have endeavoured to set up *alibis*, but without success. Baga, Moolook, Kodum and Goomanee (just mentioned) have declined to call any witnesses; and as to the others, not a single one has substantiated any point in their favour. As to Lal Khan, against whom the evidence for the prosecution is least conclusive, his own witnesses show that he was a factory servant, and do not in any way support his *alibi*. He is also named in the confessions. He is also a man of somewhat singular appearance, having been originally an upcountry Brahmin, and recently converted to Mahomedanism. Panchoo is identified by Ketabdee, (witness No 1,) specially as the man who wounded him. As to Borum (No 12,) who has been identified by five witnesses, two of whom knew him by name, he chose to examine only one witness in his defence, who proved that he was a servant of the factory.

Baga Khan, who is stated to be (as indeed his appearance and manner denote) the factory Jemadar (of *latyals* when required), was undoubtedly one of the foremost in the attack upon the village, and I think there is good reason to believe that he inflicted at least one of the wounds which was fatal to the prosecutrix's husband, Monim Sheikh. I would therefore propose in his case a sentence of transportation for life.

For the rest, as to whose degree of criminality I do not see much ground for establishing distinctions, I would propose a

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sentence of fourteen years each, imprisonment with hard labor in irons.

There are some observations which I think it my duty to make, and in which I trust the Superior Court will concur. One of these relates to the insufficiency of the Joint-Magistrate's proceedings as to the proprietor of the factory. In a case so very serious as the present, in which the direct evidence was so strong against that person, where moreover the Assistant Magistrate has himself recorded, that the factory had collected men for the attack, and also that Mr. Cockburn had sent the plundered cattle to Shabzadpore, thus indisputably connecting him with the offence, both before and after the fact, regard being had to the whole circumstances of the case, it does appear to me that further proceedings in regard to Mr. Cockburn were called for, and that the fact or the degree of his guilt should have been made matter for the decision of a Jury. It seems to me that a total failure of justice, in such a case as this, reflects seriously upon the administration of the district, and that it will be hard to make native zemindars responsible for any crimes committed by their dependants, if in the case of an English planter, seriously compromised in a matter of this description, no steps whatever are taken to bring the offender to trial.

The next point to which I must advert, is the conduct of the two Police burkundazes on this occasion, and to the manner in which the Assistant-Magistrate has dealt with it. I have already on more than one occasion stated my strong objection to the system of Mudud burkundazes, that is to say, inferior police-men sent down ostensibly to watch the proceedings of specified persons, but who are usually domesticated with the persons whom they are supposed to watch, and naturally end by neither preventing a disturbance, nor affording the least assistance when it takes place, either to the parties assailed, or to their superiors in the subsequent investigation.

This is precisely what has happened in the present case. Two burkundazes deputed, as Mr. Harvey proclaims, to prevent breaches of the peace, allow a force of *latyals* to be assembled before their faces, accompany them as amateurs throughout their day's proceedings, and finally, it would seem, do their best to prevent the case from coming in its actual and proper shape before the Magistrate.

The Assistant must have come to one of two conclusions regarding these men ; either that they were helpless and blameless, which indeed he seems to say, but in that case they should have been made witnessses in the case, and ought to have given most important and unimpeachable testimony ; or else they must be considered as accomplices in the crime and at any rate grossly failing in the performance of their duties,

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but then they ought to have been put upon their trial, and either committed to the Sessions, or summarily dealt with under his general powers by the Assistant with powers of Joint-Magistrate.

Neither of these things has been done. The burkundazes have had their statement or "*istifsar*" taken, and there, as far as they are concerned, the case has rested.

It is evident that Mr. Harvey has not been wanting in activity, and I know he is not deficient in shrewdness, but the inquiry has not, in these points, been closely and judiciously followed up. It may not be matter of surprise that a young officer should fail in these qualities, (I mean judgment and decision), but certainly his shortcomings ought to be made up by the vigilance and determination of his superior in charge of the district. It seems too much the case, even in difficult cases, and in respect of the most inexperienced officers, to give way to a feeling of "*laisser-faire,*" and to abstain from all interference with the proceedings of subordinates. This is a misfortune to the public, and also unfair upon the young officer, as either his faults and omissions are not corrected, or perhaps, when committal has taken place, they are roughly handled by superior officers, who must consider that in theory all officers exercising the judicial powers of a Magistrate are alike.

Upon this subject the Court may perhaps think it worth while to direct a communication to be made to the Commissioner of the Division, or even to Government.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The evidence against the prisoners Nos. 1, 2, 3, 4, 5, 6, 8, 10, 11 and 12, is of a much more satisfactory character than we usually have in these affray cases. I cannot doubt that they formed part of a body of armed men, which proceeded from Mr. Cockburn's factory towards the Gabgachee village, for the purpose of compelling the ryots to plough the factory lands; that after some altercation, and upon the refusal of the villagers to work for the factory, they attacked the deceased and his fellow villagers with *surkees* and *lattees*, killed the deceased, and wounded two of the villagers; the others flying before them and offering no opposition.

Baga Khan, *alias* Majum, appears to have taken the most prominent part in the outrage; and the evidence of his having inflicted at least one wound on the deceased is clear and consistent. The widow of the deceased stated, when examined by the Joint-Magistrate immediately after the occurrence, that her husband had murmured the names of Baga Khan and Lal Khan, as those of his murderers, before he died. Panchoo Khan is satisfactorily proved to have wounded Ketabdee. Who wounded Sadoollah, seems uncertain. He himself was unable to say. That the prisoners went to the Gabgachee

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village armed with deadly weapons, which they were prepared to use upon any opposition, and that they were all united in a riotous manner in the prosecution of one object, and that an illegal one, seems certain. I therefore convict them all of wilful murder; and looking to the intentions of the various prisoners, fairly inferrible from the nature of the case, as the rule for apportioning the punishment laid down in Section 75, Regulation IX. of 1793, sentence Baga Khan to imprisonment for life in transportation beyond seas: Panchoo and Lal Khan to fourteen years: and the others to ten years' imprisonment with labor in irons and in banishment from the district.

I concur with the Sessions Judge in the opinion that the employment of two burkundazes, for the purpose of preventing an Indigo affray, is absurd. A copy of the Sessions Judge's letter of reference and of this judgment will be sent to the Government of Bengal, with an expression of the Court's opinion, that parties of Military Police with an European Officer, Civil or Military, should, when practicable, be invariably employed on such duties.

I do not agree with the Sessions Judge in his censure of Mr. Harvey's proceedings relative to Mr. Cockburn. I have gone carefully over the papers, and I think Mr. Harvey was justified in the conclusion at which he arrived; that Mr. Cockburn was not on the ground where the affray took place either before or during the affray. The persons who first gave information of the murder did not mention Mr. Cockburn as having been present. Mr. Harvey was on the spot next morning and made the people point out to him the locality of the attack. He saw the marks of the men's feet distinctly; and, if they could be seen, the impression of a horse's hoof could have been seen also; but there was nothing of the kind visible; although the ground, Mr. Harvey says, was soft in one at least of the places which were particularly pointed out to him.

Whether evidence might not have been procured of Mr. Cockburn being an accessary before the fact, it is quite impossible from a mere perusal of the record to say. Certainly when a body of armed men issue from a factory, and proceed to use force against the ryots of a neighbouring village, to compel them to work for the factory, there is a strong presumption that the owner or manager residing in the factory must have employed them on their unlawful errand; and the Magistrate should always, in these cases, direct his attention to this point; but I see nothing on the record to induce me to conclude that Mr. Harvey has neglected his duty in this matter, or to compel me to bring his conduct unfavorably to the notice of Government; on the contrary, I have been much pleased with the energy and intelligence, which are apparent in Mr. Harvey's proceedings, and must say that I have seldom seen an affray case better investigated.

PRESENT:
E. A. SAMUELLS, ESQ., *Judge.*

GOVERNMENT
versus
OMUR COOMARREE KHANKEE.

Mymensingh.
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Case of OMUR COOMAREE KHANKEE.

Prisoner, a prostitute, accused of murdering deceased by manual strangulation, acquitted. Remarks on the danger of mistaking the effect of apoplexy and other seizures of that kind, as also of decomposition, for those of strangulation.

CRIME CHARGED.—Wilful murder of Chunder Kishore Mozoomdar.

Committing Officer.—Mr. I. D. Ward, Officiating Magistrate of Mymensingh.

Tried before Mr. I. W. Dalrymple, Sessions Judge of Mymensingh, on the 9th August, 1859.

Remarks by the Sessions Judge.—The prisoner, Omur Coomarree Khankee, was charged with the wilful murder of Chunder Kishore Muzoomdar, a well known Mookhtear at this station, who was found dead on her bed in her house, in the Bazar, on the morning of the 13th April last; she pleaded *not guilty*.

Information of the death of the deceased was given at the Thannah, not by the friends and relatives of the deceased, but by witness No. 7, Lukhee Narrain Singh, who having seen the deceased in this prostitute's house in the previous night, and having seen him brought out of it dead in the morning, and having, on enquiry, been first told that he had died of epilepsy, and then that he had died of cholera, became satisfied there had been foul play.

Gopee Kunt Mozoomdar, a cousin of the deceased, who had spent the night with another prostitute in the same house, and those who with him had removed the deceased to his own house, declared to the Darogah, that the deceased had died in his own house of epilepsy, after being brought from the prisoner's house, and that they had no suspicions of anything being wrong, and were evidently desirous of having no enquiry. But the Darogah, though he saw no distinct wounds on the body, considered that the appearance it presented was suspicious, and could not be accounted for by epilepsy; and having reported accordingly, suggested that there should be a medical examination.

Dr. Bellew, the Civil Surgeon, stated in his evidence, that he examined the body within twenty-four hours after death, and that death resulted from strangulation. That there were three marks in the throat, such as would be produced by, the nails of the hand; that these marks, the congestion of the brain and lungs, and the perfectly healthy appearance of all

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the external organs, left no doubt in his mind that the deceased had been strangled; and that there were no signs of epilepsy.

It appeared from the evidence of the witnesses noted in the margin,* that the prisoner was two or three years ago the mistress of the deceased, but that latterly one Kistomonee had been his mistress. On the 12th April the deceased came in the evening with his cousin, the witness Gopee Kunt Mozoomdar, to the prisoner's house, and was asked by the prisoner to call Kistomonee his mother, or in other words to renounce her; this he declined doing, saying he would do so next day. The cousins went away, but at ten or eleven o'clock they returned, and began talking and smoking with the prisoner, and Hur Coomarree, another prostitute living in the same house, in Hur Coomarree's apartment, which is the northern one, the deceased and the prisoner smoking *gunja*. On this occasion again, the prisoner urged on the deceased her wish, that he should renounce Kistomonee, which he still evaded. Subsequently the parties retired for the night, Gopee Kant Mozoomdar and Hur Coomarree remaining in the room they were in, the deceased and the prisoner going to the prisoner's small room to the north-west of the premises. There the prisoner was heard, by Kadee Khankee and Soudamonee, both of whom reside on the same premises as the prisoner, again to urge the deceased to renounce Kistomonee. These same two women stated that subsequently three men came into the house, Raj Mohun Chowdhry, Trilochun Roy and Ram Coomar Roy; Khodee stated that on hearing their voices she left the house, being apprehensive that they were accompanied by Kisto Gobind Roy with whom she had a quarrel, and that she was absent from it for a little time, having met a friend in the road; that on her return all was quiet, but the prisoner and deceased were still conversing, she in a strong and he in a weak voice; after this she went to sleep. This witness also stated that the prisoner and one of the men who came to the house, Raj Mohun Chowdhry, had formerly been intimate, but that they were not so at that time. Soudamonee stated, these three men were called into the house by Hur Coomarree.

* No. 5, Koodee Khankee.
„ 6, Soudamonee Kushbee.
„ 183-4, Hur Coomarree Khankee.

Soudamonee further stated that, having gone to sleep, she was awoke by the prisoner coming to her just before daybreak and asking her for light, which she was unable to give her. Shortly after, the prisoner called Gopee Muzoomdar and said, see how Chunder Muzoomdar is going on; after that Gopee Muzoomdar went to his house, and she saw the deceased carried away out of the prisoner's room in a helpless state.

Witness No. 8, Joydoorga Kushbee, who lives in a house near

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the prisoner's room, was awake all night, being ill from cholera, and heard no noise or disturbance in the prisoner's house; but just before dawn she heard a noise of "*hoo! hoo!*" on which the prisoner said, be quiet; shortly afterwards the prisoner came out and asked her for fire, and on her enquiring what had happened, said, she did not know what was the matter with the Muzoomdar.

The witness Kadee Kankee stated that about daybreak she heard the prisoner call the deceased and tell him to get up, and she then heard a gurgling in the throat, and that when she got up, she saw Gopee Muzoomdar and his friends carrying off Chunder Kishore, who was in a helpless state; she did not know whether he was alive or dead.

Gopee Kant Muzoomdar stated that he once got up in the night and all was quiet; early in the morning he was awoke by a noise, the prisoner opened the door of her room with a noise, and coming to him said, "Oh! Sir, rise quickly," and in answer to his enquiry said, "I don't know how the Muzoomdar in my house is going on." He went to the prisoner's room, and began to call his cousin, he did not answer; on this he asked the prisoner how this had happened; she said she did not know. He put his hand to the deceased's mouth and found it open, and he heard a slight noise in the throat; he sent the prisoner for a light; as she delayed returning, he ran to his house, and the prisoner followed him to his house; he brought people who carried off the deceased who was then in a helpless state; he did not ascertain whether he was alive or dead.

Witness No. 11, Sheebnauth Muzoomdar, a Mookhtear, who resided in the same house as the deceased, saw the deceased brought home by Nundcoomar Muzoomdar, Sreenauth Dutt, Moheshchunder Muzoomdar and Gopee Muzoomdar; Mohesh Muzoomdar said that the deceased was still warm, and that his breast moved, and sent him for a Kuberaj; on his return they told him, deceased was dead. In reply to a question about the deceased being subject to epilepsy, he further stated that every two months or so, the deceased would be down, and no one disturbed him on these occasions; he did not remember ever seeing him do so himself.

Witness No. 12, Nobinchunder Sircar, another mookhtear, stated that he saw the body of the deceased at his house, and was told by Mohesh Muzoomdar that he had been taken ill of epilepsy in the prisoner's house, but had died on his way home; he knew the deceased but had never heard he had epilepsy.

Witness No. 2, Sreekanth Dutt, who lived in the same house as deceased, stated that on the alarm of Gopeekanth Muzoomdar he went and brought the deceased home; his body was warm at the time they took him out of the prisoner's house, but owing to the wind that was blowing, he could not say

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whether he breathed or not. The veins on both sides of his neck were distended and there were other suspicious appearances, he thought it probable he had been murdered by the prisoner; with regard to his being subject to illness, he stated that one day last year, at night, he and the deceased were sleeping together, the deceased made a noise, he gave him some pushes, when he spat out some phlegm and thanked the witness, saying he had saved him from choking.

Witness No. 13, Nundocoomar Mujoomdar went to the prisoner's house on Gopee Muzoomdar's alarm; deceased was warm when taken home, he thought he was alive; he also stated that the deceased, his cousin, had some illness he was taken ill about a year before.

The above is all the material evidence for the prosecution. The prisoner, in her defence, stated that the deceased was subject to a disease resembling epilepsy; that he came to her house on the evening of the 12th April last, and after taking *paun* and *gunja* passed the night with her; that his old illness came on in the course of the night; that she awoke and heard a rattling in his throat and found he was speechless, on which she at once gave the alarm to his cousin, the witness Gopee Muzoomdar, who had accompanied him to her house and was sleeping with a girl called Hur Coomaree; that he came and found the deceased still alive, ran to the deceased's house, brought his friends and carried off the deceased, who died in his own house, and that on examination no wounds were found on the deceased's person. She maintained further, that it was impossible for a woman like her to have alone murdered the deceased; that no motive for her doing so had been proved; that if the deceased had been murdered, the people of the house would have heard the disturbance, and Gopeekanth Muzoomdar would have come to his assistance; and that he would not have removed the body, but have left it in her house and have had an enquiry.

Several witnesses were examined on the prisoner's behalf; they were prostitutes living in the immediate neighbourhood of her house, and they stated, that they heard no disturbance in the prisoner's house in the night in question, and Srikaunth Dutt who referred to his evidence previously given on the point of the deceased being subject to epilepsy.

The case was tried with the assistance of three vakeels of my Court, Ramnath Goohoo, Rajeeblochun Chuckerbutty and Brijobulub Sen. The two first considered the charge established against the prisoner on violent presumption, the third found a verdict of *not guilty*. I concurred with the majority of the Jurors.

It is satisfactorily proved by the medical evidence that the deceased met a violent death. Gopee Muzoomdar's evidence

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proved, that when he entered the prisoner's room, his cousin was dead, and that death had just occurred. The fact of his being dead, when taken out of the prisoner's house, is contradicted by no one. It is proved, besides being admitted, that the deceased spent the night with the prisoner, and it is not pleaded or proved, nor is there any ground for supposing, that any one else had access to him.

In the morning the prisoner gives an alarm that something has happened to the deceased, and he is found dead, and his death is proved to have been a violent death. Under these circumstances it is impossible to account for his death, except by attributing it to the prisoner. She urges, how could she, a woman, kill a man alone? But the deceased had been indulging in *gunja*, and it would not be difficult for a woman to throttle a man, when helpless from intoxication. With regard to a motive, it is established that the prisoner was jealous of Kistomonee, and had failed in her incessant efforts to get the deceased to promise to renounce that woman; jealous resentment was her motive. As I consider that the murder was deliberate and treacherous, I would recommend a capital sentence.

Remarks by the Nizamut Adawlut—(Present: Mr. E. A. Samuells.) I am not satisfied in this case that death was the result of strangulation. It is true the medical witness deposes that it was, and I do not in the least doubt his skill or the perfect good faith of his conclusions from the appearance which the body of the deceased presented, but I cannot shut my eyes to the fact that the authors of the best works on medical jurisprudence find it necessary to caution the medical examiner against mistaking the effects of apoplexy, hysteria, epilepsy or intoxication, for those of manual strangulation, and that in each of the above diseases, they observe that persons suddenly seized with fatal symptoms may in their agony apply their hands to their throats and thus produce marks similar to those which might be expected in cases of strangulation. It is to be observed also, that some of the appearances mentioned by the Civil Surgeon are those which occasionally attend decomposition in this country, and which Dr. Chevers says have, on two occasions, apparently been mistaken for appearances resulting from manual strangulation.

The evidence in this case all seems to me to exclude the idea of the deceased having met with a violent death. The only person to whom any suspicion points, is the prisoner, Omur Koomarree, a prostitute, with whom the deceased was sleeping, when he met his death. It is said she was annoyed at his having deserted her for another prostitute, that she urged him to break off his communication with this woman, and that his refusal to do so, furnishes the motive for the murder. But the probability seems to be that any feeling of annoyance

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she had cherished on account of his desertion (and the evidence does not account to proof of enmity) must have been allayed by the return of the deceased, and his consent to co-habit with her on the night of his death. It is highly improbable that a mere doubt of her power to retain him should have induced her to murder him. It is more likely that it would have induced her, had she been *murderously* inclined, to attempt the life of the rival who had won her paramour's affections. There is no evidence of any violent quarrel, or of anything more than an attempt on her part to persuade him formally to renounce her rival. She and the deceased retired to her hut apparently on friendly terms, and nothing indicative of a struggle was heard during the night. It is suggested that the deceased had been partaking of *gunja* and may have been so stupified as to be unable to resist, but the evidence does not show that he was in any such state of intoxication, when he entered her hut with the prisoner. The effects of *gunja*, when taken in moderate quantities, are not such as to produce extreme prostration, and I conceive it most improbable that, if the prisoner had attempted to strangle the deceased with her hands, he should not have been able to throw her off and shout for assistance. Certainly some struggle must have taken place, and there is no evidence of anything of the sort: on the contrary, the evidence of Joy Doorga, who was awake all night and in a position to hear what passed, is that there was no noise in prisoner's hut during the night, and that it was only just before dawn she heard a noise of "*hoo, hoo,*" and prisoner calling out to deceased to be quiet; immediately after which she came out and asked witness for a light, saying she did not know what was the matter with deceased. Similar evidence is given by the next witness Kadee Khankee.

It appears clear from the depositions generally, that the deceased's death did not occur until near day-light in the morning; and that he was either not dead, or just dead, when first seen by the witnesses. The evidence is a little uncertain on that point; but I gather, on the whole, that the deceased did not die until he was removed from prisoner's hut, which seems to have been some time after she had roused deceased's cousin and called in her neighbours. Are we to suppose, that having determined to murder the deceased, the prisoner ran to call in the witnesses, before her act was complete? This seems to me to be very improbable. Her behaviour in the morning, it appears to me, was not that of a person who had first been engaged in the commission of a violent murder. On the contrary, it seems to have been precisely what one might expect from a person who had become suddenly aware that something serious had happened to her companion, but what, she could not tell. She woke the cousin of the deceased and the women who lived round her

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house, asked them for light, told them she did not know what had happened to the deceased, and begged them earnestly to come and see. The cousin and those who first saw the body evidently observed nothing to lead them to suspect the prisoner of foul play, or to suppose that the deceased had died otherwise than in some sudden illness. There is evidence that he had before been subject to sudden attacks of illness, and it seems not improbable, that he may have gone to sleep in a constrained position with his head hanging over the end of the *charpoy*, and that this, combined with the *gunja* which he had taken, may have brought on a fit, during which he applied his hands convulsively to his throat; and which, for want of prompt assistance, terminated fatally.

I do not say that it may not have been otherwise, and that the Civil Surgeon may not be correct in his opinion of the cause of death; but the evidence against the prisoner under any circumstances is much too doubtful to admit of a conviction.

I acquit the prisoner and direct her immediate release.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge.*

East-Burdwan.

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Case of NEELMONI DAS DEY.

Prisoner accused of the murder of his mistress, by administering drugs with a view of procuring abortion acquitted, the evidence being inconclusive.

Remarks on the importance of ascertaining that every fact on

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versus

NEELMONI DAS DEY.

CRIME CHARGED.—1st count, wilful murder of Poorno Bagdini by administering medicine to cause abortion; 2nd count, causing abortion of Poorno Bagdini by administering medicine.

Committing Officer.—Baboo Harendra Krishna, Deputy Magistrate of Cutwa.

Tried before Mr. C. P. Hobhouse, Officiating Sessions Judge of East-Burdwan, on the 25th August, 1859.

Remarks by the Officiating Sessions Judge.—The prisoner, Neelmoni Das Dey, is committed on the charges, *first*, of the wilful murder of one Poorno Bagdini by administering medicine to procure abortion; and, secondly, of causing abortion in the above Poorno by administering medicine, and he pleads "*not guilty*" on both counts.

It should be mentioned here, that prisoner is a person of good family, resident at Cutwa, and that several respectable looking people were present in Court during his trial, and were in communication with the two pleaders who appeared on his behalf.

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which it is sought to found a presumption of guilt has been proved, and does not rest merely upon hearsay or hasty assumptions.

The principal witness in the case is one Sukheemoni Kyburtni, No. 6, and she deposes that on one day in Assar last, she was proceeding from her own home to Bazar in Gunge Moorshedpore, Cutwa, between ten and eleven in the morning; that in passing the house of the deceased Poorno, she saw her and the prisoner in the door-way of the house, which is a single house; that prisoner had a "*kutura*," a small brass cup, with what she supposed, from what she heard, to be medicine in it, and was offering it to deceased saying "eat," but that deceased said "no, she could not eat;" that she heard no more than this, and then went on to the Bazar, not stopping to see whether deceased ate or not; that on her return home from the Bazar, not long, but she cannot exactly remember how long after, she saw deceased alone in the south verandah of her house, which had but one room, vomiting, and that on asking what was the matter, deceased said she was pregnant, and that she was vomiting, after having eaten some medicine which prisoner had given her to cause abortion; that she (witness) then went home and heard the next day that deceased was dead, and that she then gave her evidence to the above effect to the Darogah.

On being questioned by the Court, this witness further deposed that the nearest way from her house to the Bazar was by the house of deceased; that Poorno was a widow, a young woman, but she could not say of what age, and was, to her knowledge, for she lived in the same quarter of the town, in keeping by prisoner, but she could not say for how long, and that she had not, that she knew, connection with any one but prisoner; and that deceased lived alone in her house: and, on being cross-examined by prisoner's Counsel, this witness added, that she was not in enmity with prisoner; that she was not an intimate of deceased's; that deceased's house is eight or ten hats from the road, and that she (witness) is a ryot of the Talookdars of Sribatti.

It may be as well to mention here, that a part of the defence was, that the case was trumped up out of enmity by one Kalichurn Shaha, Talookdar of Cutwa and Atoohat, and that Sribatti was not shewn or alleged to be a part of this Talookdar's property, or within his influence, and that moreover the demeanour of this witness left a very favorable impression upon the Court and Jury.

The next most important witness is No. 7, Udharmoni Kyburtni, and she deposed that her house adjoins that of the deceased; that about twelve at noon of the 12th or 13th Assar last, she was sweeping the front of her house, when she saw deceased alone and vomiting in the verandah of her house; that on asking her what was the matter, she said she had eaten medicine and was sick; that she (No. 9,) then went on

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with her work and went to sleep that night in her house; and that, when the Chowkidars came the next day between ten and half-past ten A. M., she heard from them that deceased was dead and went in with them to deceased's house to see how she had died; that she there found the prisoner sitting in the verandah and that on her asking him, how deceased had died, he only replied that she was dead.

On being questioned by the Court, this witness further said that when deceased was vomiting, she asked her who had given her the medicine she had eaten, and for what purpose, and that deceased replied, that prisoner had given it to ease a pain in her stomach; that deceased had a father, brother and other relations, but that they had turned her out of doors, and that, to her knowledge, deceased had been in keeping by the prisoner for about two years, and had never had connection with any one else; that the house in which deceased lived had been obtained by prisoner for her; that in Bysack or Jeyt, deceased had told her she was pregnant; that when she saw deceased vomiting, prisoner was not in the house, but that he had been there before and returned there soon after she had been; that she knew the house of witness (No. 6,) and that the nearest way from that house to the Bazar would be by the door-way of the house of deceased.

After these questions had been put by the Court, it was found, on reading over the deposition of this witness before the Magistrate, that she had said then, first, that at the time of vomiting deceased told her, she was pregnant three months and that, to destroy the child, prisoner had given her medicine which was making her vomit, and, secondly, that the night after the vomiting, she had gone out of her house and had heard deceased groaning and had seen prisoner in the house; these discrepancies being pointed out to the witness, she said at once that she had spoken truly before the Magistrate, but through fear, had not said quite the same thing nor spoken so fully before this Court.

Witness, (No. 8,) deposed that her house adjoins that of deceased; that about noon one day in Assar she was returning home from her master's house, when she saw deceased vomiting as described by the other witnesses and questioned her about it, but received no particular answer; that after she had questioned her, prisoner, who had her in keeping, came up and that she then went to her own house and that she told this to the Darogah next day.

On being questioned by the Court, this witness added, that she had never heard of any one but prisoner having connection with deceased; that she knew the house of witness (No. 6,) and that the nearest way from that house to the Bazar was by the door of deceased's house; that from this road to the

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Bazar; you could not see into deceased's house (it may be noted here that witness (No. 6,) describes prisoner and deceased to have been seen by her in the door-way), but you could hear any conversation being carried on inside the house.

Witness (No. 9,) deposes that he lives in the same quarter with prisoner, and that his house is four or five *russees* apart from that occupied by deceased; that prisoner had deceased in keeping, and that no one else that he had heard of, ever had connection with her, and that the house occupied by deceased was one rented for her by prisoner; that prisoner is a servant in the shop of one Bipro Doss Dutt, distant four or five *russees* from deceased's house, and was in the habit of going backwards and forwards between the shop and the house, in the latter of which he had his meals and lived, and that he remembers seeing prisoner two or three times every day in and out of his house all through the month of Assar.

Witnesses Nos. 2 and 3 depose to the *Sooruthal* and to the search of deceased's house on the morning of her death, and to the finding thereat of a stick of "*cheeta,*" lead-wort, which they saw taken out of a basket, it being wrapped up in a piece of bloody cloth, inside the house, and No. 2, on being questioned generally by the Court, deposed to remembering the having seen, amongst other property found inside the house which he also mentioned, a small (*kutora*) brass cup or *lota.*

The *Sooruthal* which is dated 13th Assar, 26th June, describes the view of the body of deceased and the search of the house of Niloo Kyast, and remarks that the body was that of a woman of about thirty years of age, the eyes white and open, the mouth shut, the belly somewhat distended, and marks of blood on the clothes, and clotted blood extending from the private parts to the anus, also that the "*cheeta*" above mentioned and some "*seut*" (ginger), "*peepul*" (pepper), and "*jeera*" (cummin), such as are used by native women in child-birth, were found inside the house.

Witness (No. 5) the Native Doctor of Cutwa, deposes to having dissected the body of deceased on the 27th June, 14th Assar; that he found no poison in the stomach, but evident signs of the stomach having been evacuated by vomiting; that he found that part of the belly below the stomach to contain poison, and the fœtus in the womb, the woman was about thirty years of age, dried up, black and destroyed by poison, and that he was of opinion that the woman had died from the administration of some drug to procure abortion, the same having been probably administered both by the mouth and by thrusting it into the private parts.

On being questioned by the Court, this witness said that he had known cases of the fœtus becoming black and burnt up from administration of the herb "*cheeta*" (lead-wort); that

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if administered by the mouth it would have been so diluted in water, that there would be no outward appearance after death of the administration in the body of the deceased, and that the blood described as on the body in the *Sooruthal* probably proceeded from the fœtus.

The herb found in deceased's house was sent by the Deputy Magistrate to the Chemical Examiner to Government in Calcutta, and in his report, No. 110, July 20th, 1859, he describes it to be of a genus, called "*saith kurubeer shakar,*" a poisonous herb used by natives to procure abortion, and the witness (No. 5,) declares it to be of the same genus, but a more deadly poison than "*cheeta.*"

In his defence prisoner denies the crime in toto and pleads an *alibi*, stating that he formerly had deceased in keeping, but about a month back had left her; that on the 1st and 11th Assar he was at Calgaon, on his road to and from Calcutta where he was in the interim; that he returned home the night of the 12th Assar, and then heard that deceased had died of dysentery; that when he went on the morning of the 13th to her house to enquire, he was arrested by witness No. 3 and the Tax Jemadar; that he slept the night of the 11th in the house of one Sarodapersad Chatterjee (not produced or summoned;) that on the 11th he came up in the Coal Train from Calcutta to Bhediah, and that this case has been trumped up against him by Kalichurn Shaha, against whom he once gave evidence in a suit, and that witnesses Nos. 19, 15, 20, 21, 16 and 17 will prove deceased's death from dysentery, and witnesses Nos. 23, 24, 25 and 18, that deceased was attended for dysentery, and Nos. 22 and 18 his enmity with Kalichurn Shaha, and Nos. 10, 11, 12, 13, 14, 26, 27 and 28, his *alibi* at Calgaon.

Prisoner's counsel complained that witnesses Nos. 19, 22, 23, 24 and 25 were absent, and that prisoner's cause, suffered thereby, but it is to be observed that present witness No. 18 was summoned to prove the same matter as absent witness No. 22, and has failed to do so; and that present witnesses Nos. 18, 15, 16, 17 and 21 were summoned to prove the same matter as absent witnesses Nos. 19, 23, 24 and 25, and have either not done so, or have been withdrawn voluntarily by prisoner, who declines to examine Nos. 13, 14, 15, 16, 17, 20, 21, 26, 27 and 28, so that it cannot be said that any injustice is done to prisoner by the absence of witnesses Nos. 19, &c., and his counsel do not ask that the case may be postponed in order to their presence.

Witnesses Nos. 10, 11 and 12 were examined at the instance of prisoner, to prove his *alibi* at Calgaon on the 1st and 11th Assar, and witness No. 18, to prove the enmity of Kalichurn Shaha and the death of deceased from dysentery.

The *alibi* and the other allegations are entirely unsupported;

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No. 10 says he saw prisoner on the 1st of Assar on his way to Calcutta, and on the 11th on his way back to Cutwa. No. 11 only says he saw prisoner on the 1st on his way to Burdwan, and is then withdrawn. And No. 12 says he saw him on the 1st on his way to Bhediah and remembers and knows no more. And Nos. 10 and 12, did not know the date of the present day, and could give no reason for remembering especially the 1st and 11th Assar. And it is not to be supposed, and no reason is assigned, why prisoner should in the rainy season proceed viâ Calgaon, ten *coss* west of Cutwa and on the other side of the Adjai in the Beerbhoom district, either to Bhediah to take the Railway there, the direct road to which is on *this* side of the Adjai, or to Calcutta, the direct road, and in the month of Assar the best and quickest road to which, from Cutwa, is by the Bhagiruttee river. And again witness No. 18 knows nothing of the enmity or the death from dysentery.

How then does the case stand against the prisoner?

He is seen by a person (witness No. 6,) who knew him and deceased well, whose direct road to the Bazar led her naturally close to deceased's house, in a place where he and deceased could be seen by a passer-by to offer her something in a cup; he is heard, in a place whence he could be heard by this same passer-by, to ask deceased to take, and she is heard to refuse to take that something in the cup.

Immediately after this conversation deceased is seen by this same witness No. 6 and by Nos. 7 and 8, to be vomiting, and she tells witness No. 7 that she is pregnant by prisoner, and is vomiting in consequence of medicine administered by him to procure the abortion of this pregnancy, and in the night she is heard to groan and in the morning is dead.

In the morning prisoner is apprehended in the house of the deceased, and in that house, which is in fact prisoner's and his usual dwelling-place, as by depositions of Nos. 6, 7, 8 and 9 and the description in the *sooruthal*, are found a brass "*kutora*" or cup, similar to that described by witness No. 6, as seen in prisoner's hand, a herb used to procure abortion, and condiments such as native women use after childbirth, as by depositions of witnesses Nos. 5, 2 and 3, and the Government Chemical Examiner's letter.

It is proved, beyond a doubt, that deceased was in keeping by the prisoner, and that no one else had connexion with her, that she was pregnant and that she died by the administration of drugs used to procure abortion, and which did actually have such effect; that prisoner and no one else always lived with deceased, and that he was in and out of it throughout the day of the deceased's vomiting.

There is first then as against prisoner *the motive to the crime of procuring abortion*. Deceased was a widow in his keeping,

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and it is notorious, that amongst all classes of Hindoos (and prisoner is a Kayust, respectably connected) the existence of offspring from intercourse, such as was that between prisoner and deceased, is considered a family disgrace. Prisoner's motive to the crime then was the avoidance of this disgrace.

It was argued by counsel for the prisoner that deceased had the same motive to take the poison herself, but, putting aside the evidence, when once deceased's good name had been lost by her being put away from her father's house and her living in open prostitution under prisoner's care in his house, what further disgrace could the birth of a child have been to her? And even amongst the Rajpoots, is it not an historical fact that the mothers were always got out of the way, previous to the fact of infanticide of the female children?

There are, secondly, the facts of deceased's over-heard unwillingness, and prisoner's over-heard direction to her to drink something, of her having taken something soon after, which caused her to vomit, and which she declared to be medicine administered by prisoner to procure the abortion of her pregnancy by him; of a poisonous root declared to be such as people use to procure abortion being found, together with a cup answering to the description of that said to have been used by him, in prisoner's house, together with other things used by lying-in women; that if the above root had been administered into the mouth, it would have been so, as by the evidence of the Surgeon, in water; and of the death of deceased by the use of a drug to cause abortion.

The Jury, Taruknath Mookerjee, Rakhaldas Chowdry and Brijonath Chowdry, Pleaders, concur with me in thinking the prisoner *guilty* of causing the death of the deceased by administering medicine to procure abortion, and think him liable to punishment at discretion, but in the absence of any apparent intention to kill, they would find the case one of culpable homicide rather than of murder.

From the latter part of their judgment, I dissent, for in Section 4, Book III. Chapter I. in Russell on Crimes, I find it laid down that, "if an action, unlawful in itself, be done deliberately and with intention of great bodily harm to a particular individual, and death ensue against or beside the original intention of the party, it will be murder." This is at page 538, Vol. I. Edition 1843.

And again at page 540, I find, "that where a person gave medicine to a woman to procure an abortion by which the woman was killed, it was held clearly to be murder; for although the death of the woman was not intended, the act was of a nature deliberate and malicious, and necessarily attended with great danger to the person on whom it was practised."

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And so it was in this case, the act was unlawful, it was done deliberately and with intention of great bodily harm, and death ensued. I would therefore convict the prisoner, on the first count, of wilful murder, and, with reference to the frequency of the crime and the open manner in which I understand it to be practised, I would make a severe example in this case, and would sentence the prisoner to the severest punishment, short of death, viz. to imprisonment with labor and irons for life in banishment to another Zillah.

Remarks by the Nizamut Adawlut.—(Present Mr. E. A. Samuells.) The facts which may be accepted at once as proved in this case are, that the deceased, a Hindoo widow, was the kept mistress of the prisoner, that she was in the third month of her pregnancy, that she took deleterious drugs, and used mechanical means to procure abortion, and that she died in consequence.

The first two facts are said to raise a presumption that the prisoner incited the deceased to use means for procuring abortion. They furnish a motive, the judge observes, for the crime with which the prisoner is charged, and they render it probable that the attempt of the deceased to procure abortion must have been made with his cognizance, if not with his active assistance.

This argument, however, assumes two things of which we have no proof first, that the prisoner was aware of the pregnancy of the deceased, and secondly that he was himself the cause of it. We have no certainty that the deceased woman may not have been in child to some person other than the prisoner. The witnesses say, they are not aware of her having an intrigue with any one else, but none of them resided with her or had any particular reason apparently for watching her, and she may have had many intrigues unknown to them.

The fœtus also, it appears, was only three months old and may therefore have existed without the prisoner's knowledge. This being possible, the presumption against the prisoner arising from the two facts above stated, entirely fails. The prisoner may allege that what is not proved is not true, and may claim credit for the counter-presumption that the deceased endeavoured to cause abortion, in order to conceal her infidelity from him. In the absence of any proof of the prisoner's paternity, or of his knowledge of deceased's pregnancy, the latter hypothesis, it is evident, is quite as good as that raised for the prosecution.

What then is the evidence by which it is sought to connect the prisoner with the criminal acts of the deceased which resulted in her death? It consists first, in direct evidence, that the prisoner tendered some medicine to the deceased shortly before she was taken ill; and secondly, of the statement of the deceased herself after her illness had commenced, to the effect

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that her illness arose from medicine administered by the defendant with a view to procure abortion.

The first fact rests on the evidence of one witness Lukhemonee Kyburtnee, who says she was going to the bazar about 11 A. M. when she saw the prisoner and deceased in the doorway of deceased's hut. The prisoner had a small brass cup in his hand which he offered to deceased, urging her to take the contents, but she refused to do so. Two or three hours afterwards the witness returned, and found deceased vomiting. The house of the deceased was eight or ten paces from the bazar-road, and the interior could not be seen from the road. Now here, in the first place, we must observe, there is no proof either that the cup presented by the prisoner to deceased contained any deleterious drug, or that deceased afterwards drunk the contents of this cup. Both are assumptions, and the former is an improbable assumption, for if, on the hypothesis of the prosecution, the prisoner had determined to administer medicine to the deceased for the purpose of procuring abortion, it is very unlikely that he would have selected a door-way in full view of the street as the scene of his crime, or would had fixed on the busiest time of the day, when he was most likely to be interrupted, for its perpetration. This improbability is increased by the fact which the *sooruthal* and *post mortem* examination disclose that, in addition to the administration of drugs, mechanical means were used to induce abortion. If we admit that the witness Lukheemonee did see the prisoner offering a cup to the deceased, we manifestly cannot jump to the conclusion that it contained anything that was not perfectly innocent, and the testimony of the witness is, that whatever were the contents of the cup, the deceased did not drink them in her presence or to her knowledge, and in fact refused to do so.

There remains then the evidence of the same witness Lukheemonee that she was told by deceased, whom she found vomiting about two or three hours after she had seen her with the prisoner, that "she was pregnant, and that her sickness was caused by her having taken some medicine which prisoner had given her to cause abortion." The witness Adhermonee Kyburtnee is also cited, as having heard the same statement from the deceased, but I find that she does not mention it at first at all when examined by the Sessions Judge. She afterwards says, in answer to a direct question on the subject, that deceased said, "Prisoner had given her medicine to ease a pain in her stomach," and she ultimately declares that the statement she made to the Magistrate, viz. that deceased had told her "Prisoner had given her medicine to destroy her child," was the correct one. It is evident therefore her evidence is too contradictory to be relied on.

The evidence of the witness Lukheemonee seems to have

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been consistent throughout; but the first question we must ask in regard to it is, whether, supposing it to be true, it is evidence against the prisoner? and the question must be answered in the negative; for it is evidently nothing more than hearsay evidence. The statement of deceased cannot be looked upon as a dying declaration; for it does not appear that at the time it was made, the deceased supposed herself to be in any danger of death, or even to be seriously ill. I must point out also, that under any circumstances, it would have been manifestly unsafe to rely upon the report made of deceased's statement by the witness; for it is impossible to tell to what extent the actual words of the deceased may not have been distorted by the imagination of the witness, after the cause of the deceased's death became known to her, and it is a suspicious circumstance that she does not appear to have mentioned what she had heard to any one, until after the death of the deceased, and that she made no attempt to procure her any assistance during her illness.

The statement of the deceased being inadmissible for the reasons stated, the prisoner must necessarily be acquitted, for on that statement the whole case against him rests. A warrant of acquittal will issue accordingly.

QUARTERLY

No.

FOR APRIL, MAY, AND JUNE,

1859.

NOTICE.

With reference to Government Order, dated the 27th May, 1857 No. 2783, *Quarterly* Numbers only of selected cases are published.

REGULAR CASES.

APRIL,

1859.

REGULAR CASES.

APRIL 1859.

PRESENT:

E. A. SAMUELLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

CHUNDEE PERSAD SEIN (No. 12,) KASICHUNDER SIRKAR (No. 13,) GURUPROSAD SHAHA (No. 14,) GOUR PROSAD SAHA (No. 15,) BABIN PEADAH (No. 16,) ASIM SHEIKH (No. 17,) BARU SHEIKH (No 18,) GOVINDCHUNDER DOSS (No. 19,) MEELOU SINGH BURKUNDAZ (No. 20,) HORIDOSS KHANSAMAH (No. 21,) MOLOUGA MOSHYA (No. 22,) NAZIM AKOND (No. 23,) ASHINA CHOWKEEDAR (No. 24,) MADARI CHOWKEEDAR (No. 25,) IMAMBUKSH KHULLU (No. 26,) MADARI NOSHYA (No. 27,) BISHU SIRDAR (No. 28,) GUZARUT SINGH (No. 29,) ANUNDCHUNDER SHAHA (No. 40,) MOBU KARIGUR (No. 41,) RASHBEHABEE SHAHA (No. 42,) ISHORCHUNDER TALOOKDAR (No. 43,) DOORGANATH CHUKERBUTTY (No. 44,) AND RAJMOHUN SIRKAR (No. 18.)

Rungpore.

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Riot attended with wounding and plunder. A ryot wished to transfer himself and property from the bazar of Madlah to the rival bazar of Chachaitara, but was prevented. On this the

CRIME CHARGED.—1st count, riot attended with the dangerous wounding of Hukum Singh and the slight wounding of three others, and the plunder from the shops of Bahadi Mundul, Uzir Akond, Ishurchunder Shaha, Zia Mahomed Mundul, Udoi Napit, Sobani Mundul of property valued at Rs. 2,263-0-9; 2nd count, Nos. 17, 18, 19, 20 and 21, wounding Hukum Singh with intent to do him serious bodily injury.

Committing Officer.—Mr. A. J. Jackson, Officiating Joint-Magistrate of Bograh, zillah Rungpore.

Tried before Mr. F. A. Glover, Officiating Sessions Judge of Rungpore, on the 11th February, 1859.

Remarks by the Officiating Sessions Judge.—This case is referred for the orders of the superior Court, in consequence of a disagreement between the law officer and myself regarding the guilt of two of the prisoners.

The circumstances of the case are as follows.

Chachaitara and Madlah are two bazars, situate on opposite sides of a small *nullah*, and the proprietors (as natural to Bengalees whose interests are so opposed to each other) are

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Chachaitara naib assembled a body of armed men with whom he proceeded to Madlah and commenced pulling down a Nowbutkhana, which had been an object of contention, but had been awarded to the Chachaitara zemindar under an Act IV. decision. The Madlah people remonstrated, on which he ordered an attack. Several people were wounded and the bazar plundered. Prisoners with exception of three, against whom the evidence was weak, were punished.

The law does not permit even lawful objects to be carried out in an unlawful manner—as by the employment of bodies of armed men,—and if riot or

constantly quarrelling. A small piece of *chur* land on which the Madlah zemindar, or rather the person holding the bazar under him, had erected a Nowbutkhana, was the subject of an Act IV. suit, when possession was given by the appellate court to the Chachaitara zemindar. The Nowbutkhana, however, still remained on the land. The immediate cause of the outbreak appears to be this. A brahmin named Kalisoonder living at Madlah, wished to remove to the opposite side of the *nullah* and requested the Joint-Magistrate to send a burkundaz to prevent any breach of the peace during the removal of his property; this was done, and a number of men appear to have accompanied Kalisoonder to his house for the purpose of bringing his household stuff across to his new habitation. In the mean time, however, Rubbee, the brother of Kalisoonder objected to the removal, on the ground that all the property was *ijmalee* and that he had as much right to it as his brother; in consequence of this interference and it may be of that on the part of the Madlah villagers, for on this point the evidence is not very clear, the Chachaitara people returned tumultuously to their side of the creek. There (and here begins the present case) they found their zemindar Baboo Grijasunkur Muzoomdar accompanied by his naib (prisoner No. 12,) and a number of the Shahas of Chachaitara bazar in "*mars*" (small platform-boats) and a *panshway*, together with a large body of men armed with spears and *lattees*. The people who had gone to fetch Kalisoonder's property, reported their failure to the Baboo, who immediately ordered his men to break down the Nowbutkhana, and to plunder the Madlah bazar, a general attack then appears to have been made; the Nowbutkhana was pulled down, and the rioters led and urged on by the naib and the Chachaitara Shahas rushed into the Madlah bazar, wounded several of the Mahajuns of the place and plundered the shops; whilst the Nowbutkhana was being destroyed, one Hukum Singh (witness No. 9,) a servant of the Madlah man, came forward and remonstrated, but was severely beaten by the order of the Chachaitara Baboo, so severely indeed, as to cause grave fears for his life.

The Joint Magistrate (who appears to have acted throughout with great promptitude) heard of the riot soon after it had occurred (the place is only five miles distant from Bograh) and after waiting till Hukum Singh, the wounded man, was sufficiently recovered to give his deposition, went out to the scene of action; what he saw there is best given in his own words. Mr. Jackson writes: "on my arrival I found that the darogah had acted with great promptitude, having secured the naib, a mohurrir and five *lattials*, against whom full evidence has been obtained." I then proceeded to take the evidence of the principal sufferers by the outrage and the defence of the parties arrested.

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"An attempt was made on the part of the Chachaitara people to get up a counter-case, and some four or five petitions were put in by merchants of that village, complaining that their shops had been plundered by the Madlah people. I therefore examined their bazar and shops. What little appearances of mischief were visible, were manifestly simulated, as nothing of any value was even meddled with and all that was tossed about were a little salt, a few old *jhamps*, and some exceedingly dirty bolsters. Their witnesses broke down entirely on cross-examination, and I punished all the plaintiffs for a false complaint."

Speaking of the mischief done to the Madlah people the Joint-Magistrate writes: "I saw the shops on the following morning, and can well believe, that the loss is not exaggerated. Their (the Mahajuns) large wooden chests were all broken open, and every single thing that could be broken, was smashed to pieces. As much of their stock consisted of jaggery, it was of course all destroyed."

bloodshed ensues, it is a serious aggravation of the offence, if there has been an evident determination on the part of the accused to effect their purpose in spite of all opposition.

Old age held to be no ground for a mitigation of the lenient sentence passed on the naib by the Sessions Judge.

The assault upon the burkundaz Hukum Singh, and the subsequent attack upon the bazar are deposed to by twenty-four witnesses (named in the margin.) Some of these are Mahajuns who were themselves wounded, and whose shops were plundered; others were parties who had come to Madlah to make various little purchases at the Mahajuns' shops; some again were the servants of a silk factory, stationed at Madlah, for the purpose of buying cocoons; others were passing through the village by chance; one was the man Kali Soonder (No. 24,) the attempted removal of whose property seems to have been the exciting cause of the tumult. These witnesses saw the riot, from different points of view and identified different persons. Their evidence has many points of circumstantial difference, but in essentials it hangs together exceedingly well. The testimony of the Madlah Mohajuns, who may be supposed to have an interest in damaging the owners of the opposition bazar, is supported by the evidence of witnesses unconnected with either party, in one instance (witness No. 24,) by that of one who was their professed ill-wisher.

No. 1, Bahadi Mundul,
" 2, Kohurdi Pramanick,
" 3, Amira Nushya,
" 4, Sooban Pramanick,
" 5, Sokut Sirkar,
" 6, Oojur Akond,
" 7, Ishurchunder Shaha,
" 8, Jearmamood Mundul.
" 9, Hukum Singh,
" 10, Gooboo Nushya,
" 11, Chytunchurn Goopt,
" 12, Natoo Jemadar,
" 13, Bhola Burkundaz,
" 14, Somutoollah,
" 15, Nipoocha,
" 16, Nidoo Sirkar,
" 17, Korim Pramanick,
" 18, Hormohun Mundul,
" 19, Kona Fokeer,
" 20, Sorye Sirdar,
" 21, Jamal Pramanick,
" 22, Ally Pramanick,
" 23, Jameer Mundul,
" 24, Kalee Soonder Chuckerbutty.

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All these witnesses (one or two strangers to the place excepted) recognised certain of the prisoners as actively engaged in the riot. There are of course, discrepancies here and there in these witnesses' evidence, and in the following analysis I have excluded all these identifications which were not made by the witnesses from the first; where a witness mentioned a name or pointed out a person before the Joint-Magistrate and omitted to do the same before me, I have attached no weight to his testimony regarding that person, and *vice versâ* when witnesses identified before this Court parties not recognised or not mentioned by them in the foujdary.

This eliminated the analysis is as follows,

Prisoner No. 12, is identified by	19 witnesses.
Prisoner No 13, ...	18
Prisoner No. 14, ...	12
Prisoner No. 15, ...	11
Prisoner No. 16, ...	8
Prisoner No. 17, ...	9
Prisoner No. 18, ...	10
Prisoner No. 19, ...	9
Prisoner No. 20, ...	7
Prisoner No. 21, ...	9
Prisoner No. 22, ...	1
Prisoner No. 23, ...	3
Prisoner No. 24, ...	4
Prisoner No. 25, ...	6
Prisoner No. 26, ...	3
Prisoner No. 27, ...	2
Prisoner No. 28, ...	5
Prisoner No. 29, ...	3
Prisoner No. 40, ...	4
Prisoner No. 41, ...	3
Prisoner No. 42, ...	6
Prisoner No. 44, ...	3
Prisoner No. 18, ...	4

The nature of the wounds inflicted on Hukum Singh and on the Goldars is deposed to by the native doctor, Sheikh Gholam Alli, from whose evidence it appears that the burkundaz was most severely beaten, some of his ribs were fractured and he received several spear wounds besides. The injuries inflicted on the other wounded men were trifling. There is besides this, evidence to show that the red umbrella (mentioned by the prosecution witnesses) and several other articles such as books and letters the property of the zemindar, Baboo Grijasunker Muzoomdar were found in Gour Persad Shaha's house at Chachaitara. I only, however, mention this by the way, as the Baboo has absconded and is not at present before the Court.

No. 29, Sheikh Gholam Alli.

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There is also evidence on the record (witnesses Nos. 25, 26 and 27,) to prove that the attack was premeditated on the part of the Chachaitara people.

No. 25, Sona Chowkeedar,
„ 26, Nozor Mahomed,
„ 27, Kitoo Mollah.

The prisoners pleas are in every instance *alibi*.

Prisoner No. 12, declares that at the time of the riot, which was directed on the Chachaitara bazar, and not on the Madlah Bundur, and by the Madlah people, he Chundee Persad was hiding quietly in the Chachaitara zemindaree cutchery and never out at all.

Prisoner No. 13, makes a similar defence.

Prisoner No. 14, pleads *alibi* from the 15th of the month in which the disturbance occurred, till the evening of the 21st, the day of the riot.

Prisoner No. 15's defence is that, on the 21st of Srabun, he was lying sick at home in his house at Chachaitara.

Prisoner Nos. 16, 29, 40, 45 and 18, all plead that they were at different places, more or less distant from the scene of the disturbance.

All the prisoners call witnesses, some of them a very large number, to support their pleas.

Prisoner No. 12, examined twelve witnesses to prove that he was sitting quietly in his cutcherry when the riot took place. Now setting aside for a moment, the astounding fact, that twelve illiterate villagers, men who profess to have come from many different places and on many different errands, all knew that the date of their coming to the cutcherry was the 21st of Srabun, none of these witnesses can account for the prisoner after a certain time in the afternoon, somewhere between 1 and 3 P. M. The riot did not take place till some little time after that, and therefore, the cutcherry in which Chundee Persad was doing his business being almost within a stone's throw of the Nowbutkhana, there is no reason why the prisoner should not have taken part in the disturbance after his friends had left him. Some of his witnesses who admit that as they were going away they heard a disturbance in the bazar, appear to have walked complacently homewards without evincing the slightest curiosity as to what was taking place behind them, without even turning their heads to see the *tamasha*.

These remarks apply equally to the defence set up by prisoner No. 13.

Prisoner No. 14, brings no less than twenty-five witnesses to prove his whereabouts from the 15th of Srabun to the evening of the 21st. These men speak in the most confident manner, have dates at their finger's ends, and although they could not tell the date of their own great festival (the mohurrum) knew perfectly well the day of the week and the date of

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the month on which Gour Persad arrived at their villages. I remark moreover that all these witnesses were the prisoner's clients and the tie between Mohajun and ryot is no slight one. It is also worthy of notice, that every place said to have been visited by the prisoner during this tour might with ease have been reached from the scene of the riot in a couple of hours. The witnesses called for prisoner No. 15, attempt to prove that Gour Doss was on the 21st of Srabun lying ill with stomach complaint. But the credibility of these witnesses as to the day on which they saw the prisoner lying sick is demolished by their own statements. They aver that there was no riot in the bazar on that day, whereas it is proved to demonstration, nay admitted by many of the prisoners themselves, that there was a disturbance; one of two things therefore follows, either that the witnesses are not speaking of the 21st of Srabun, or if they are, they are telling palpable lies.

It is not necessary to go through the whole of the evidence offered for the defence. It is throughout of the same character. Witnesses who never knew a date before in their lives, have all at once a supernatural memory and fix the 21st of Srabun without hesitation.

The question in this case is the relative credibility of the evidence. On one side there is the consistent (in essentials) testimony of no less than twenty-four eye-witnesses; on the other the testimony to days and dates of ignorant illiterate people, who can give no reason for remembering one day more than another. In one instance only is the defence (prisoner No. 42, Rashbeharee Shaha) supported by documentary evidence. Prisoner No. 42 produces two bonds, dated on the 21st of Srabun, at a place called Phoolbaree, in the names of two of the defence witnesses: a slight inspection of these documents shows that they have been got up for the occasion: in both there is an important erasure in the lender's name, the word was originally Rajbeharee, the j has been palpably altered in both bonds into an s and the word now reads as it ought to do, Rashbeharee. Again in one of the bonds, the name of the second borrower has actually been written (afterwards) over a part of the name originally on the deed; comment is needless.

The law officer convicts all the prisoners with the exception of prisoner No. 43, whose plea of illness he considers valid.

I concur with him in acquitting this prisoner; the man is now, and as appears from the Joint-Magistrate's statement was, when the defence was taken before him, suffering from large boils. His witnesses prove very satisfactorily that he had been so suffering from before the time of the riot.

But I also consider prisoners Nos. 22 and 27 entitled to an acquittal.

The former was identified by one witness only, the latter

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by two; the defence is in both cases reasonable, I mean that there is ground for supposing that the witnesses may have known the dates to which they refer; at all events there is no *primâ facie* improbability of it; moreover, I consider the identification imperfect and would give the prisoners the benefit of the doubt.

The prisoner No. 43, is acquitted and released.

Against each of the prisoners, Nos. 12, 13, 14, 15, 40, 42, and 18 as being the ringleaders and instigators and against each of the prisoners Nos. 16, 17, 18, 19, and 29, as having taken a particularly active part in the actual plundering and wounding, I record a sentence of three years' imprisonment without irons with a fine of 100 Rs. in lieu of labor, and against each of the prisoners Nos. 20, 21, 23, 24, 25, 26, 28, 41 and 44 as being less actively engaged in the riot a sentence of eighteen months' imprisonment without irons with a fine of 50 Rs. in lieu of labor.

The warrants will issue on receipt of orders from the superior Court.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) All the prisoners with the exception of those whom the Sessions Judge proposes to acquit have appealed, and Nos. 12 13, 14, 15, 40, and 42 have been ably defended by counsel.

I concur with the Sessions Judge in the acquittal of Nos. 22 and 27. On the first two days of the inquiry they were only named by one witness and the evidence against them throughout is weak.

This is also the case with regard to Moboo Karigur prisoner No. 41. A warrant will therefore issue for his release.

On behalf of the prisoners who are represented by counsel in this case, it has been urged that there are discrepancies and improbabilities in the statements of the witnesses for the prosecution; that the *nobut-khana*, in the removal of which the riot commenced, was the property of the Chachaitara zemindar, whose servants and tenants the prisoners are; that the disturbance therefore did not originate in any unlawful act; and that if in the heat of altercation, the other defendants did wound Hukum Singh and others, and subsequently plundered the bazar, these acts did not naturally flow from the order for the removal of the *nobut-khana;* and the leading prisoners should not be made responsible for them. It was further maintained that the Madlah people had no right to oppose the removal of the *nobut-khana*, which had been made over to the defendants by a decree for possession under Act IV. of 1840 and that they therefore, must be held to have been the aggressors.

These pleas, however, are not supported by the facts of the case. It appears that the Chachaitara people having failed to effect the removal from the rival bazar of Madlah, of a ryot who wished to transfer himself and his property to Chachaitara,

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the zemindar of Chachaitara assembled a large body of men armed with swords, *tangees* and other deadly weapons; and came himself in a boat to the spot accompanied by his naib (the prisoner No. 12) and several other persons. He then sent his armed retainers across the *nullah* which separated the two bazars, and directed them to pull down the *nobut-khana.* Some thirty or forty inhabitants of Madlah assembled, none of whom, however, appear to have been armed with any more dangerous weapon than a *lattie,* while several of them seem to have been unarmed, and one of their number Hukum Singh remonstrated against the removal of the *nobut-khana.* Upon this the zemindar ordered him to be beaten, and the order was repeated by the naib. An attack immediately took place. Hukum Singh was severely wounded and three other persons were more slightly injured. There is some evidence of the Madlah people having fought when attacked, but none of their having been the aggressors. Their resistance, however, was quickly overpowered. The Baboo and his naib ordered the bazar to be plundered, and this appears to have been effectually done, the shops having been rifled, the boxes of their owners broken open, and property to a large amount carried off.

The facts of the destruction of the *nobut-khana,* the wounding of Hukum Singh and the others, and the plunder of the bazar are not contested by the defendants, though each defendant decries his individual participation in the crime and endeavours to establish an *alibi.* The evidence, however, in this case is less open to suspicion than we usually find it in trials of this description. The Magistrate was himself on the spot within a few hours of the occurrence. A good deal of evidence was taken immediately; and the whole of the witnesses twenty-four in number were forwarded to the Magistrate within three days. Several of the witnesses are servants employed in a silk factory close to Madlah who are unconnected with either party; and the evidence of the shop-keepers and other inhabitants of Madlah, appears to be fair and consistent. The discrepancies which have been pointed out in their evidence are no more than must be expected in all native testimony, and especially in the narrations of persons relating the particulars of a disturbance which they had witnessed from many different points.

There can be no doubt upon the evidence, that all the prisoners with the exception of those whom I have acquitted, were present and concerned in the disturbance; some taking a more, some a less active part. The measure of their guilt which the Judge has adopted, appears to me to be a correct one, and more satisfactory than that of the law officer; who in accordance with the principles of the Mahomedan law would award the highest punishment to those who struck the blows,

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or plundered the shops with their own hands, and would deal more lightly with those who confined themselves to the work of encouragement and instigation.

The legal defence which has been set up for the latter class of prisoners entirely fails; for even if it be allowed that the removal of the *nobut-khana* was the origin of the disturbance, and that it was a lawful act, it is clear that the prisoners set about it in an unlawful manner, and were, from the first, determined to carry it out *vi et armis*. The law does not permit the assemblage of large bodies of men armed with deadly weapons even for the purpose of effecting a lawful object; and in the event of a riot or bloodshed ensuing, it is a serious aggravation of the offence, if there has been an evident determination on the part of the accused to effect their purpose in spite of all opposition. The acts of violence and plunder which resulted in this case were such as in this country, were certain to flow from the prisoners' proceeding, in landing a band of armed men in a rival bazar, and setting them to pull down a house which had long been an object of contention between the parties. The preparations of the prisoners indeed warrant the presumption that they went to the bazar with the deliberate intention of committing some act of violence; and there is direct evidence to the naib having ordered the assault on the witnesses and the plunder of the bazar. With the exception already noticed, I see therefore no reason to interfere with the sentences proposed by the Judge and warrants will issue accordingly.

An appeal *ad misericordiam* has been made to the Court on the ground that the zemindar of Chachaitara, who is at present a fugitive, and will, it is said, be affected by these proceedings, is a young man of good education, and that the naib is an old man of 63; but old age affords no valid ground for mitigating the very moderate sentence, which has been passed by the judge in this instance, and the case of the zemindar is not now before us and must be decided on its own merits.

PRESENT:
H. T. RAIKES, Esq., *Judge*.

GOVERNMENT

versus

GIRIDHUR KOPALI (No. 12,) PROLAD KOPALI (No. 13,) TARACHAND KOPALI (No. 14,) OF STATEMENT No. 6, FOR JANUARY 1859, AND PORAN KOPALI (No. 1,) OF STATEMENT No. 6, FOR FEBRUARY 1859.

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The prisoners being charged as accessaries after the fact in a murder, in having burnt the body of the deceased while believing the report that she had been killed by her husband, the Sessions Judge convicted them of the offence charged, the act being one which might have prejudiced the course of justice by failure of the police to produce the body, though the Judge held at the same time, that no such motive had actuated the prisoners.

CRIME CHARGED.—In both cases accessaryship after the fact in the murder of Prosonno Kopalini on the 5th of November, 1858, corresponding with the 21st of Kartick, 1265, B. S.

CRIME ESTABLISHED.—In both cases, as crime charged.

Committing Officer.—Mr. E. W. Molony, Magistrate of Jessore.

Tried before Mr. W. S. Seton-Karr, Officiating Sessions Judge of Jessore, on the 25th January and 24th February 1859 respectively.

Remarks by the Officiating Sessions Judge.—On the first case the first point necessary for consideration is, clearly, whether the murder of the woman Prosonno can be held proved. Now on this there is the evidence of Mookta, a little girl, witness No. 1, the sister of the deceased, and of witness No. 2, Pitumbur Kopali. The first deposes that she was playing under some trees and that, hearing a noise, she went to her sister's house and found her sister speechless and with blood issuing from her mouth, and that her sister's husband, Narayan, ran out of the house at the time and made off. Witness No. 2, after at first professing obliviousness, declared, as he had done before the Magistrate, that, going to the house of the deceased, he saw the husband standing with his feet on the neck of the deceased from whose mouth foam was issuing, and that the husband rushed away on seeing him.

Witnesses Nos. 4 and 5, prove that Giridhur, the chief defendant, told them that the deceased, his daughter, had been murdered by her husband. No. 5 refused on this to help to burn the body.

Witnesses Nos. 7 and 8, depose that there were marks like blood in the house, but on this evidence I lay little stress. The marks may have been produced by sickness.

The confessions of the three prisoners, before the police and the Magistrate, show that they were quite aware that the woman had not died a natural death; in fact, that they fully believed her to have been murdered by her husband.

The cause is said to be jealousy at her intrigues with one

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Lukhon Kopali. The alleged murder has not been heard of since the death. But the fact of a murder is established.

In the Sessions Court the three prisoners, after pleading *not guilty*, made a defence which was tantamount to a confession of their having burnt the body, knowing full well that the woman had been murdered. Nos. 13 and 14, pleaded that they had been induced to do so by the representation of the father, and all three urged that they meant no harm, and that they were ignorant of the duty of giving information.

The Court acquitted on the ground that to make such an act *criminal*, there must be proof of an intent to aid the person who perpetuated the murder in evading justice, which the Sessions Judge distinctly considered was not proved in this case.

In the teeth of this admission and of the other evidence, the jury found the prisoners *not guilty*.

I find the prisoners clearly guilty of the offence of concealing the murder, which they knew had taken place, and in so far as the failure by the police to find the body might aid the murderer, and so, at some time, possibly prejudice the course of justice, they are legally guilty as accessaries after the fact. But I have no reason to conclude that they burned the deceased with any such wish as to screen the offender; they are extremely ignorant and helpless, and they have already been more than two months in duress. Looking at this, and at their defence, I sentence Nos. 13 and 14 to two months' imprisonment and 30 Rupees or labor, they having been deceived by the prisoner No. 12, and I sentence No. 12 himself, who ought to have given notice to the police, to four months' imprisonment and 30 Rupees fine or labor.

On the second case. This is a supplementary trial to that held in this Court on the 25th of January last.

The facts are clearly laid down in the decision of that date. The prisoner is implicated by the evidence of the witnesses Nos. 1 and 2, and he himself admits that he helped to burn the body of the deceased, at the request of her father, intending no harm and acting as he was bid.

The jury found the prisoner *guilty*.

The presumption is clear that the prisoner must have known that he was aiding to burn the body of a person who had not met with her death by fair means, and legally, he is guilty as an accessary after the fact, insomuch as the burning of the body *might* aid the murderer, or might eventually tend to defeat the ends of justice. But, for the reasons given in my former judgment, which equally apply here, I do not think that his offence calls for a severe punishment.

I sentence him to two months' imprisonment and 30 Rupees fine, or labor in default of payment, to be paid within two days.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The three prisoners in this case were charged as accessaries after the fact in the murder of Prosonno Kopalini, and it appearing to the Sudder Court, upon a review of the

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abstract statement of prisoners punished without reference, that the judgment pronounced on the prisoners by the Sessions Judge of Jessore was not warranted by the evidence, the Court called for the whole record of the trial for inspection.

It appears from the record, that one of the prisoners, Giridhur Kopali, is the father of the deceased; and he states that having gone one morning to the house of his daughter he found her dead, and to all appearance murdered, and heard from two children, living near, that his daughter had been killed by her husband, who, the father knew, had entertained suspicions of his wife's fidelity. The murderer, however, had fled; and the father being in great distress, called the two other prisoners and another (subsequently tried and convicted of the same offence) and with their assistance removed the body, and afterwards burnt it according to Hindoo custom.

All the prisoners confess that they *heard* that the deceased had been murdered by her husband; and the Judge states it to be his opinion that the murder had been committed, and that they fully believed this to be true; he therefore finds them "guilty of the offence of concealing the murder, which they knew had taken place; and in so far as the failure of the police to find the body might aid the murderer, and so, at some time, prejudice the course of justice," the Judge held them to be "legally guilty as accessaries after the fact."

Now as burning the body of a Hindoo is in accordance with the religious rites of the Hindoos, the act itself was perfectly harmless, and the intention with which the act was done can alone make it criminal, and subject those who did it to punishment. But on this point we have the judge's own words in favor of the prisoners, as he proceeds to say, "But I have no reason to conclude that they burnt the deceased with any such wish as to screen the offender."

The prisoners themselves say that had they been aware that it was wrong to burn the body, they would not have done so; and the Judge has himself declared there is no proof of any criminal intent. Had "the failure of the police" then "to find the body" aided "the murderer," and thus prejudiced "the course of justice," it would be a consequence of the burning of the body, which the prisoners, who did the act, had apparently never contemplated. The question therefore is, was the consequence one, which although not contemplated or intended by the prisoners, yet followed so naturally from the act, that they are under the circumstances, equally responsible for its occurrence.

The answer to this is, that such responsibility only flows from acts that are in themselves unlawful; and when an act is in itself *indifferent*, the intent with which it is done is what constitutes its criminality.

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This, I believe, is the proper doctrine to follow, and the rule of law is thus expressed at page 872 of Broome's Commentaries on "Criminal Law generally," and which I quote as the first part seems to me particularly applicable to the present case. "It was indeed laid down by Lord Mansfield as generally true that where an act, in itself indifferent, if done with a particular intent, becomes criminal, then the intent must be *proved* and found by the Jury; but where the act is in itself unlawful, the proof of justification or excuse lies on the defendant, and on failure thereof, the law implies a criminal intent."

Now, in the present case, the cremation of the corpse by the prisoners was an act in itself perfectly lawful; but, if done with the *intent* of aiding the supposed murderer to evade justice, becomes criminal. To constitute the offence of which the prisoners have been found guilty, proof of this intent was necessary, but the Judge himself acquits the prisoners of any such intent, when he records that he has "no reason to conclude that they burned the deceased with any such wish as to screen the offender." The prisoners, therefore, have committed no act which entails upon them penal responsibility and are not guilty of the offence charged.

I, therefore, direct them to be immediately released. This order will also apply to the prisoner Puran Kopalee.

PRESENT:

C. B. TREVOR, ESQ., *Judge*.

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Held that previously to looking at the depositions containing the contradictory statements on which perjury-

CRIME CHARGED.—Perjury in having on the 9th March, 1859, corresponding with the 26th Falgoon, 1265, B. S. or 1220, M. S., intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the Magistrate of Chittagong in the burglary case of Mohoson Allee Manjee, *versus* Allee Chand and others, that Diga Gazee and Abdool Allee saw when he (Allee Chand) placed the property in the ditch, and in having on the 10th March, 1859, corresponding to the 27th Falgoon, 1265, B. S. or 1220, M. S., again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the said Magistrate, in reply to the question "when Allee Chand placed the property (in the ditch) were Diga Gazee and Abdool Allee present," stated

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"No; they were not," such statements being contradictory to each other on a point material to the issue of the case.

Committing Officer.—Mr. T. P. Larkins, Magistrate of Chittagong.

Tried before Mr. E. Radcliffe, Additional Sessions Judge of Chittagong, on the 17th March, 1859.

is assigned, it is necessary to ascertain that they were taken before competent authority and in proper legal form.

As in the present case, the second deposition is represented as having been taken on oath and not on solemn declaration, in accordance with the imperative provisions of Act V. of 1840, no assignment of perjury can be made on any statement contained in it; and the prisoner is entitled to his release.

Remarks by the Additional Sessions Judge.—The Magistrate's abstract of charge and examination and grounds of commitment afford every particular connected with the case. The evidence of witnesses Nos. 1 and 2, prove the prisoner's confession to be voluntary, that of witnesses Nos. 3 and 5 that the depositions of the 9th and 10th March, 1859, were written by them respectively, at the prisoner's dictation, and that of witness No. 4 that the prisoner was duly placed on his solemn affirmation.

The prisoner pleads *not guilty*, and in his defence, admits the correctness of his first deposition.

The Law officer considers him guilty and liable to "*tazeer.*" In this verdict I do not concur for the following reasons.

Although it is proved by the evidence for the prosecution, that the two depositions were of a contradictory nature on points material to the issue of the case of burglary with reference to the guilt, of Yassin, Mahomed Turkee, and Bocha Gazee, I have the honor to point out that the deposition of the 10th March, 1859, taken by witness No. 5, is altogether irregular, the words at the head of his written deposition being "this day the witness being again present was placed on his oath" the words "that he was sworn according to the provisions of Act V. of 1840" as directed in paragraph 3, Circular Order No. 44, Volume 3, being omitted, and the word "*huluf*" used instead of "*protigya*" in opposition to Circular Order No. 93, Volume 4, and Reports, Lower Provinces, 1852, part 1, page 70, and, therefore, as by precedent of 11th January, 1851, in the case of Government *versus* Shooroop Chunder Nath, wherein it is declared that a deposition taken irregularly cannot be made the ground of a conviction for perjury, I dissent from the opinion of the law officer and recommend the prisoner's immediate release, the illegality complained of being manifest.

The prisoner has been offered a release from jail pending the Sudder Court's decision under Section 7, Regulation XIV. of 1810, on the production of sufficient bail.

Remarks by the Nizamut Adawlut.—(Present: Mr. C. B. Trevor.) This case has been referred to the Court in consequence of a difference of opinion between the Law officer and the Judge.

The Law officer considers the prisoner guilty of perjury, and liable to *tazeer*. The Judge considers him *not guilty*, inas-

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much as the second deposition, that taken on the 10th March, was not taken in due legal form, and perjury cannot be on any statement made in it.

Now it is quite clear that before the depositions, containing the particular contradictory statements on which perjury is assigned, can be looked at, it is necessary to see not only that they have been taken before competent authority, but also that they have been taken in proper legal form.

The deposition of the 9th March meets fully the requirement of the law; but that of the 10th as remarked by the Judge, does not; under these circumstances no perjury can be assigned upon any statement made in it. The charge against the prisoner as laid necessarily falls; and he becomes entitled to his immediate release.

The Sessions Judge will direct the Magistrate to be cautious, in future, that the form, directed by this Court for Hindoos and Mussulmans as the case may be, with a view of carrying out the provisions of Act V. of 1840, are duly observed by him.

PRESENT:

C. B. TREVOR, Esq., *Judge.*

GOVERNMENT AND NEELA CHOWDRY *versus* BECHOO SAHOO TUTTEREE.

Bhaugulpore.

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CRIME CHARGED.—1st count, making and uttering false coin to wit, 5 spurious brass pice; 2nd count, uttering 5 pieces of brass as pice with intent to defraud Neela Chowdry.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. W. Ainslie, Magistrate of Bhaugulpore.

Tried before Mr. T. Sandys, Sessions Judge of Bhaugulpore, on the 22nd November, 1858.

In order to render a person liable for uttering or forging counterfeit coin, it is not necessary that the counterfeit should be a perfect resemblance of the

Remarks by the Sessions Judge.—Plaintiff keeps a spirit shop and deposes, on two occasions he had found false pice in his bag and set a watch to detect from whence they came. The prisoner coming after dark, paid him two more which he examined by a light and found to be false, and similar to those previously paid to him. The prisoner on being taxed with

Wit. No. 1, Munnoruth Hujjam,
" " 2, Gyanee Hujjra,
" " 3, Thukooree Chokeedar.
Before Police.
Wit. No. 4, Sumur Bhuggut,
" " 5, Shibchurn Doss.

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real coin. A very imperfect resemblance will be sufficient to bring the pieces forged or uttered within the definition of counterfeit coin.

Under clause 2, Section 9, Regulation XVII. of 1817 the punishment attached to the crime of forging counterfeit coin is from seven to fourteen years' imprisonment, and if the Judge is of opinion that a further mitigation or remission of punishment is necessary, he, under clause 3, is to pass sentence according to the preceding clause and to refer the matter with his sentiment for the final orders of the Sudder Nizamut Adawlut.

The sentence passed upon this prisoner of five years'

	Before Magistrate.
Wit.	No. 6, Luchmun Suhoy,
,,	,, 7, Doorgapershad,
,,	,, 8, Toolsee,
,,	,, 9, Bokoo Saho.

the fraud, confessed and the surplus metal remaining from the casting, was found on search of his house.

Prisoner's defence before this Court is of the same inculpatory kind pretending, however, for the first time, that the pieces of brass were in the same box with pice, and paid by him through oversight, but the issuing was too deliberate and repeated to entitle such pretence to any weight. The counterfeits too could have been turned to no other use than that of representing pice, although as shewn by the Magistrate they were so very imperfect "that except in dark no one could be deceived by them, but as he did succeed in passing them, any argument for his innocence arising from the nature of the counterfeit, falls to the ground."

The jury* unanimously convict the prisoner on the counts charged.

In this verdict, concurring as above shewn, I convict the prisoner on the 1st count, on strong presumption, and on the second of full evidence and sentence him as follows:

Sentence passed by the lower Court.—Five (5) years' imprisonment with labor and irons in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. C. B. Trevor.) There seems no doubt but that the counterfeit brass coin paid on this occasion by the prisoner, was a very imperfect semblance of a real pice: they were very similar to a pice in size, but had no impression on them. This degree of resemblance however is quite sufficient to bring within the definition of counterfeit coin.

There can be no doubt according to the prisoner's original confession, that his necessities compelled him to resort to this mode of action; and also that this is not the first occasion on which he has passed similar counterfeits to the prosecutor in lieu of current coin. The Sessions Judge finds the prisoner guilty on the first count of *making* and uttering false coin. Now the penalty attached by law Clause 2, Section 9, Regulation XVII. of 1817, to the crime of forging counterfeit coin is imprisonment from seven to fourteen years, and if the Judge is of opinion that a further mitigation or remission of punishment is necessary, he under clause 3, is to pass sentence according to the preceding clause, and to refer the trial with his sentiments at large, for the final sentence or order of the Nizamut Adawlut.

Under this law, it was not competent to the Judge, looking to the nature of the crime of which he has convicted the prisoner, himself to pass a sentence of five years' imprisonment with labor and irons.

* Kurreem Bux, Ishaq Chuq, Bhaugulpore,
Puncheelal Doss Rathore, ditto,
Munwar Ally, Rampore Khyra, ditto,
Parusnauth Saw, Oordee Bazar, ditto.

This Court, however, finding the prisoner guilty simply of the crime of uttering or tendering in payment counterfeit coin, knowing the same to be counterfeit, considers the sentence passed by the Judge under Clause 2, Section 10, of Regulation XVII. of 1817 to be a just and proper sentence, and confirms it accordingly.

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imprisonment with labor and irons confirmed under Section10, RegulationXVII. of 1817, the Court finding him guilty solely of uttering counterfeit coin knowing it to be such.

PRESENT:

J. H. PATTON AND A. SCONCE, ESQS., *Judges.*

GOVERNMENT, ON THE PART OF MUSST. ALEMEE

versus

TAHZ MAHOMED.

Assam.

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Case of TAHZ MAHOMED.

Murder of a boy by his guardian a sepoy, for the sake of his property under remarkable circumstances. The body was after inadequate examination suffered to be buried, but exhumed and again examined. The guilt of murder was brought home to prisoner on violent presumption. He had ascribed the death to the agency

CRIME CHARGED.—Wilful murder of Edoo boy.

Committing Officer.—Captain E. P. Lloyd, Joint-Magistrate of Kamroop.

Tried before Lieutenant-Colonel John Butler, Deputy Commissioner of Assam, on the 14th February, 1859.

Opinion of the Deputy Commissioner.—It appears that the prosecutrix, Musst. Alamee, is the wife of the prisoner Tahz Mahomed, a Sepahee in the 2nd Assam Light Infantry, and that her brother Sheikh Edoo, a boy of about 12 or 13 years of age, lived with her and her husband, as her father at his death left his son and property valued at 200 Rs. to the care and guardianship of the prisoner, and that when the prisoner wanted to spend the ready cash the deceased boy, Sheikh Edoo, prevented him and on this account the prisoner often threatened to kill the boy and beat him and bare him ill-will; at 7 A. M. on the morning of the 29th December, the prisoner took an axe and the boy Sheikh Edoo with him, to cut firewood in the jungle and at 11 A. M. the prisoner returned home with a load of firewood without the boy. The prosecutrix enquired of the prisoner, her husband, the cause of the boy Sheikh Edoo her brother's absence, he replied he was playing on the road, and having bathed prisoner returned to eat his food, but he was in such a state of tremor he could not eat as usual; said the fish stunk and he felt indisposed and telling the prosecutrix he was going in search of the boy, left about 11 A. M. and returned at noon with the corpse of the boy saying he had found it in a bamboo thicket, killed in a bamboo

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chepa or press by an evil spirit; the prisoner reported the death of the boy to the subadar, Mohun Singh, at the quarter-guard, and the medical officer was also made acquainted with the death, but as the prisoner said he had no suspicion of any one having murdered the boy, he directed the prisoner to bury the corpse and it was interred in the evening of the 29th December; subsequently suspicion being excited that the boy had come to an untimely death, the body was disinterred on the 1st January, and the medical officer holding a *post mortem* examination on it, declared that the boy had died from violence. Two witnesses Mussamut Gheen Luggy and Kollaram Sepahee saw the prisoner with an axe in his hand accompanied by the boy Sheikh Edoo, going towards the jungle to cut firewood at about 7 A. M. on the morning of the 29th December. Musst. Jugguree witness, also, deposes that the boy Sheikh Edoo asked her in the morning about 8 A. M. whether she would not send her daughter for firewood, that he was going with the prisoner, she replied she would not and the boy went away.

Gendra Apa, Munglo Apa, Jathra Apa, and Runjeet, four boys about 12 or 13 years of age, were not sworn but deposed that they were cutting grass on the edge of the Sola Beel when the prisoner, about noon, came up and asked them if they had seen a boy, they replied they had seen no one and in half an hour afterwards the prisoner appeared with the corpse of Sheikh Edoo, untied the fastenings of his legs and with a wet cloth wiped the body and asked them to look at it as an evil spirit had killed it, but hearing the name of the devil they were afraid and did not approach nearer than twelve feet, on this the prisoner took up the corpse and went away and they also went away. Six witnesses depose to the *sooroothal* made by the police darogah, but the *post mortem* examination of the body by Doctor Allan, on the 1st January, leaves no doubt that the boy Sheikh Edoo was cruelly murdered by being pressed or beaten to death.

The prisoner has throughout the trial, pleaded *not guilty* and before the jury says, the boy did not accompany him to cut wood and that he found him entangled in the bamboo thicket in a bamboo *chepa* or press, killed by an evil spirit, he adduces no witnesses in his defence, and urges that as the boy and his property were entrusted to his charge what object could there be for his murdering him.

The jury and Magistrate find the prisoner guilty of wilful murder.

There being no eye-witness to the deed, the case requires the most mature consideration. The prisoner by prosecutrix's statement, it is clear, bore the deceased boy no good will and often threatened to kill him and did beat him often for preventing his spending the money.

of a devil, though the medical evidence showed it was the result of violence. Deceased was when last seen alive in prisoner's company; prisoner was next seen alone, and falsely denied that the boy had been with him; he pointed out the corpse in a dense jungle impenetrable but by force; and where no one could have found it but by accident or from personal knowledge; and gave to certain persons contradictory and absurd explanations of the manner in which deceased met his death, such as could not possibly have occurred, as proved by the local enquiry of the Magistrate. For these circumstances prisoner accounted in a manner palpably false. Sentence—death.

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Two witnesses* besides the prosecutrix prove beyond a doubt, that the prisoner went with the boy on the morning of the 29th December, to cut firewood and the prisoner returned with wood to prosecutrix at 11 A. M. without the boy.

The trepidation† evinced by the prisoner when he returned with the wood and inability to eat his usual food and his going then at noon and at once finding the body, and then the cold manner in which he proceeded to wash or wipe it with a wet cloth dipped in the beel and taking it home and saying the boy had been killed in a bamboo *chepa* or press by an evil spirit, are, it must be admitted, weighty and very suspicious facts. The evidence of Doctor Allan also establishes beyond a doubt, that the boy met his death by violent means, either pressure or beating and the plea put forward by the prisoner, that the boy has been killed by an evil spirit is so preposterous and his total inability to urge anything that could in any way exculpate him from the charge, and offering no witnesses in his defence all lead to the inevitable conclusion, that he is guilty of having perpetrated a cruel premeditated murder to appropriate the boy's property, and though there is no direct evidence or eye-witness to the perpetration of the foul crime, on violent presumption I would convict him of the charge of wilful murder of the deceased boy, Sheikh Edoo; but the ends of justice will I think be secured by the prisoner being sentenced to imprisonment for life with labor in irons in transportation in lieu of capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. H. Patton and A. Sconce.) The boy, Edoo, whose murder forms the subject of this trial, was about twelve years of age and lived with his sister Alamee, the prosecutrix, and her husband the prisoner, who is a sepoy in the local Regiment stationed at Gowhatty. About noon of the 29th December last, Edoo was brought back to the house dead. On that day the body was examined by the Civil Surgeon Dr. Allan, who observed a dark discoloration or bruise, which extended over the left side of the neck from the collar-bone to the lower jaw. Up to this time, the violent death of the deceased had not been apprehended and the body, though as it appeared to us without adequate examination and the exercise of judicious discretion on the part of the Civil Surgeon, was suffered to be buried; but subsequently suspicion of foul play was entertained; on the 1st January, 1859, the body was disinterred and having been re-examined by Dr. Allan, this officer in his deposition states, that the body was but little decomposed and

* Musst. Gheen Luggy and Kollaram.
† Vide Prosecutrix's evidence.

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admitted fully of a careful examination; that the same injuries were observed on the body as when he first examined it; that dissection over the bruised part revealed the muscles and tissues beneath to be in a complete state of pulp and infiltrated with extravasated blood from rupture of the vessels of the neck, which accounted for the death of the deceased and could only have been caused by violence applied externally; that from the absence of any abraison of the skin over the injured part the injuries inflicted must have been caused either by severe pressure, such as the bent knee applied with force to the neck while the deceased lay on the ground struggling and which in addition, would have caused death by strangulation: repeated blows from the fist inflicted in the same position.

Alamee states that her husband, the prisoner, about 7 o'clock in the morning of the 29th December, went to cut wood, taking Edoo with him; that about 11 o'clock prisoner returned alone and said he left Edoo playing; that he partook sparingly of the meal that had been prepared for him and seemed to tremble; that after awhile prisoner went to look for Edoo and returned at mid-day with his body saying he had found the boy strangled among the tangled branches of a clump of bamboos, being killed as he explained it by a devil. The witnesses Musst. Gheem Luggee and Kollaram Sepoy saw prisoner and the deceased go off in company early on the 29th December, and Kollaram adds that they were proceeding in the direction of the Chota Beel, in the neighbourhood of which the body of Edoo was by the prisoner afterwards found. The witness, Nazir Mahomed, states that about 10 o'clock he was going towards the Chota Bheel and saw the prisoner coming with a piece of dry wood on his shoulder towards cantonments, but casting repeated looks towards the grove of bamboos where the corpse had lain. The witness, Wullee Mahomed, states that about noon prisoner came to him and asked if he had seen Edoo; then went on towards the Chota Bheel; and an hour afterwards returned and requested him to go to his burial saying first that he had been drowned; then that he had been killed by an evil spirit and that he had found his body on the fork of a bamboo, in a thorny clump growing on the banks of the Chota Bheel.

Bheekun Khan, Jemadar, and several sepoys attended the funeral of Edoo and describe the marks of violence observed by them on the body. These appearances appear to have excited more or less apprehension, but not till the following day was anything done to elucidate the circumstances of the boys' death. On the 30th December, however, the Jemadar, Bheekun Khan, witnesses Goorun Tewaree, Lukheenath, Sheikh Argoon, Wullee Mahomed and others, accompanied the prisoner to the spot where he said he found the body of Edoo. He took them to

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an impenetrable bush of thorny bamboos, into which, as the witnesses describe it, the hand could not be thrust. On the ground, near, were seen indications of a struggle as if the earth had been scratched by the finger nails of a child.

Four boys have been adduced as witnesses to shew that while they were at play near the Chota Bheel, prisoner enquired if they had seen Edoo and not long afterwards he brought out the body from the jungle and told them that a devil had killed the boy. These young witnesses have not been examined on oath, but they are about thirteen years of age and as they appear to be capable of understanding the nature and object of a solemn affirmation, the form prescribed by law, should have been administered to them. As it is, however, their evidence is unimportant, for the prisoner in his own answers supports their statements.

The witnesses, Bogah and Kashee Singh, speak to the small bamboo branch upon which the prisoner in the presence of the Joint-Magistrate, said he found the head of Edoo lying: and in his letter reporting the trial, the Joint-Magistrate Captain Lloyd thus describes what he saw: "the bamboo bush is densely thick down to the ground, but at the bottom there is a hole just large enough to admit a man on his hands and knees; inside, it is larger and running across in a horizontal direction, and about one foot from the ground, was a small branch about $\frac{3}{4}$ths of an inch in diameter. The prisoner shewed me this as the branch on which he found the deceased lying on his neck. It is quite impossible, in my opinion, that this branch could have caused death to any one; however feeble, it had free play up and down and was so slight that with the weight of the hand alone, it would bend easily to the ground."

Prisoner was the guardian of the deceased and his desire to appropriate the property left by the boy's father, worth about Rs. 200, or as the prisoner says Rs. 100, is stated by the prosecutrix to be the motive for the murder.

In his defence the prisoner states, that when he went to cut wood in the morning of the day of Edoo's death, he was not accompanied by the boy; that he got the wood at a hill occupied by a clergyman at a tea-plantation; that he returned about $\frac{1}{2}$ past 11; that his wife asked about her brother and he told her Edoo had not accompanied him; that about noon he went to look for the boy towards the Chota Bheel where he thought he might be playing; that he accosted (the witness) Wullee Mahomed and going on, met a cooley, personally a stranger to him, who, in answer to his enquiry, said he had seen no boy, but a red cloth, such as he wore, under a bamboo bush at the Chota Bheel; and that after again asking for information from the boys abovementioned, he went to the bamboo clump and found Edoo entangled in the branches and so on. Prisoner adduced no witnesses.

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The trial was conducted by the Joint-Magistrate with the assistance of a Jury. The Jury find the prisoner guilty, and Captain Loyd concurring in that verdict recommends a capital sentence: but the Deputy Commissioner to whom the proceedings were referred, while he also, on violent presumption would convict the prisonor of the wilful murder of the boy Edoo, is of opinion that the ends of justice will be secured by a sentence of imprisonment for life in transportation.

It appears to us that all the circumstances of the case fully substantiate the conclusion to which the Deputy Commissioner and the first Court have come. We have first, the undoubted assurance that the deceased, Edoo, was murdered. The injuries which became the proximate cause of his death were quite beyond the compass of accident or self-infliction. He was taken from home by the prisoner; was last seen in his company; and the prisoner returning alone, not only exhibited much perturbation of manner, but falsely denied his having been attended by the boy during the morning. Further we find that the prisoner, with a facility indicative of previous knowledge, proceeded as it were direct to the spot where the corpse lay, a country described by the Joint-Magistrate as "covered by dense jungle where the chances against his finding it were irresistible," while his statement that the place had been indicated to him by a cooley of whose name and person he knew nothing, and from whom he heard, not that he had seen the dead boy, (which would have enabled the cooley to anticipate him in the discovery of the murder) but only his dress, appears to be evasive and untrue. Again we have the utterly improbable explanation offered by the prisoner, of the attitude in which the corpse was found by him and his equally frivolous, inadequate and false suggestions as to the cause of his death. Thus it seems to us, that all the circumstances of the case fix upon prisoner the accountability for Edoo's death, and our conclusion is, that he must be convicted of the wilful murder of this boy.

We sentence the prisoner, Tahz Mahomed, to suffer death.

SUMMARY CASE.

APRIL,

1859.

SUMMARY CASE.

APRIL 1859.

PRESENT:

E. A. SAMUELLS, ESQ., *Officiating Judge.*

(No. 21 OF 1859.)

ROY MOTHOORANATH CHOWDRY—PETITIONER

versus

GOBINDCHUNDER GANGOOLY—OPPOSITE PARTY.

24-Purgunnahs.

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Case of GOBINDCHUNDER GANGOOLY.

The discretion with which the law vests Magistrates to summon a defendant in person to answer for a bailable offence is a reasonable and not a capricious discretion. The summons must not be made an instrument of punishment, and it is only in special cases where it appears likely that the defendant may abscond, or the like, that a Magistrate is justified in refusing a defendant in a bailable case the

Vakeels of Petitioner.—Mr. J. Newmarch and Baboo Kishen Kishore Ghose.

Vakeel of opposite party.—Baboo Sreenath Doss.

Vakeel of Government.—Baboo Sumboonath Pundit.

One Gobindchunder Gangooly complained that when on his way to his office, he was seized by certain persons and carried to the cutcherry of Roy Moothooranath Chowdhry, by whose order he was beaten and plundered of sundry articles which he had with him at the time. No reason is assigned for this assault further than the plaintiff's refusal to obey a summons of Roy Mothooranath.

The case was taken up by the Deputy Magistrate of the 24-Pergunnahs, who issued a summons for the appearance of the defendants. Several of these appeared and have been sentenced by the Deputy Magistrate. Roy Mothooranath sent in a medical certificate from a graduate of the Medical College and prayed to be allowed to appear by attorney. The Deputy Magistrate and judge concur in rejecting this application, and insisting on the personal appearance of the defendant.

The offence charged against the prisoner is a bailable offence of a very ordinary kind. His personal attendance during the trial was not therefore requisite. The summons issued against him ought to have afforded him the option of appearing in person or by attorney, and if the Deputy Magistrate considered bail for his ultimate appearance necessary, the amount should have been specified in the summons, and he should have been permitted to put in bail through his attorney. The course which the Deputy Magistrate seems to have pursued of summoning the defendant to appear in person, to answer the charge is not warranted by the law (Reg. IX? of 1807,) with respect to offences of the nature of that charged against the defendant. The orders of the Sessions Judge and Deputy Magistrate are reversed. The Deputy Magistrate will permit the defendant

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to appear and make his defence by attorney, on his giving such reasonable and sufficient bail as the Deputy Magistrate may consider necessary, to attend and receive sentence in the event of his conviction.

option of appearing by attorney. If bail for appearance to receive sentence is considered necessary, it should be specified in the summons.

NOTE.—On a reference from the Judge of the 24-Pergunnahs, the Court, on the 7th April, informed him that there was no question in this case of the general discretion of a Magistrate to summon a defendant in person, to answer for a bailable offence when there was reason to suppose he was about to abscond, or when there existed other good and sufficient reason for the issue of such a process; and that the Court's order had reference only to the special circumstances of this case, which did not appear to them to warrant the issue of a personal summons. The Court observed that the only legitimate object of a summons was to ensure the attendance of the accused when requisite, and that the process must not be employed as an instrument of punishment.

REGULAR CASES.

MAY,

1859.

REGULAR CASES.

MAY 1859.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge.*

GOVERNMENT AND MR. LEWIS RAINEY

versus

RAMCOOMAR GOOHO (No. 1.) DWARKANATH SHAH (No. 2,) OOLLAS MULLICK (No. 3,) AND LOL MAHOMED (No. 4.)

Dacca.

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In a case of wounding with attempt to murder, in which the evidence for the prosecution consisted entirely of direct testimony unconfirmed by any collateral circumstances, the prisoners were acquitted, a portion of the evidence being manifestly fabricated and the rest improbable and inconsistent with ordinary experience. The importance in such cases of a searching cross-examination and careful enquiry

CRIME CHARGED.—Prisoner No. 1, 1st count, severely wounding Mr. Lewis Rainey, Indigo-planter of Panchooriah factory, zillah Furreedpore, with intent to murder; 2nd count, conspiracy to murder Mr. Lewis Rainey. Prisoners Nos. 2 to 4, 1st count, aiding and abetting in the first count on prisoner No. 1; 2nd count, accessaries before and after the fact to the first count on prisoner No. 1; 3rd count, conspiracy to murder Mr. Lewis Rainey.

Committing Officer.—Mr. J. H. Ravenshaw, Joint Magistrate of Furreedpore.

Tried before Mr. R. Abercrombie, Sessions Judge of Dacca, on the 21st March, 1859.

Remarks by the Sessions Judge.—The circumstances attending this case are the following. The prosecutor Mr. Lewis Rainey, an Indigo-planter in the district of Furreedpore, stated in his deposition, that at about 7 o'clock on the morning of 31st January last, he left his factory for his usual walk, and after proceeding about a mile and a quarter, he stopped for a few seconds in the Nowcooree village to look at some images in a *Kalleebaree,* which had attracted his attention. Resuming his walk he had proceeded about ten paces when something struck him forcibly from behind, which threw him forward for a foot or two. Turning round to ascertain what it was, he saw a man running off into the village by a bye-lane, and thinking he might be a madman, prosecutor called out to him to stop, but the man continued running away. Prosecutor then felt a pain at his right side, and pressing the part where he felt the pain with his hand he discovered for the first time, that he had been stabbed, the hand being instantly covered with blood. He managed to walk on about the distance of four *beegahs* further to a boat-building yard, when becoming exhausted from the loss of blood he sat down upon a log of wood, and sent for the darogah of the Baitkah thannah, which was close at hand. When the

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darogah arrived, he gave him a cloth which he bound round his body, and then sent him into the station in a palanquin, the prosecutor having first shown the darogah the spot where he had been stabbed, and pointed out the direction in which the man who had stabbed him had run off. He adds that this man, whom he saw running away after he had been stabbed, had a short stick under his arm. He was unable to recognize him, not having seen his face, but from his general build and appearance he (prosecutor) thinks that the prisoner No. 1, now before him, Ramkoomar Gooho, is the man. He does not recognize either him or Oollas Mullick, prisoner No. 3, having seen neither of them before; but he knows Dwarkanath Shah (No. 2,) and Lol Mahomed (No. 4,) the latter being his ryot. He saw neither of these men at the time he was stabbed. The only reason he can assign for the outrage is his having taken in farm a small share of a village of which Dwarkanath Shah holds a share, but claims the whole independent of the other shareholder who gave him the farm. Dwarkanath had asked him several times not to take this farm.

into the collateral facts elicited, pointed out.

Sheikh Akber and Sheikh Bukshee, witnesses Nos 1 and 2, state that on the morning in question, they were proceeding towards their homes which were close by, and saw Mr. Rainey walking along the road, and the four prisoners talking together behind a clump of bamboos to the north of the *Busnubbee Akra.* Suddenly Ramkoomar Gooho (No. 1,) ran after the prosecutor and with a sharp-pointed iron-headed stick like a spear, about three feet in length, which he had in his hand, he struck him on the right side, and then ran off towards the west into the village. The prosecutor walked on a little distance and then sat down on a log of wood. The darogah being sent for, came and bound up the wound, &c.

Kefeitoollah and Sheikh Bukhshee Mahomed, witnesses Nos. 4 and 5, stated that they were in the service of the prisoner Dwarkanath Shah, who asked them on the evening previous to, as well as on the morning of, the occurrence, in the presence of the other prisoners, whether they would undertake to murder Mr. Rainey. When they refused to comply with his wishes on the second occasion, the four prisoners went out together, Lol Mahomed having in his hand a small spear, such as is described by witnesses Nos. 1 and 2, and returned above three *ghurrees* afterwards.

Sheikh Alum and Kooran Puramanick, witnesses Nos. 6 and 7, depose to having seen the prosecutor walking along the road on the morning in question, and the four prisoners talking together to the north of the *Akra.* They also saw the prisoner Ramkoomar run after Mr. Rainey with the short spear in his hand.

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Dhonaoollah, witness No. 8, was sitting in a shop. Hearing a noise he went in the direction of it and saw the prosecutor sitting on a log of wood, and the blood flowing from a wound in his side. At his desire he went for the darogah, and afterwards gave intimation of the occurrence at the factory.

The medical officer* stated in his evidence, that Mr. Rainey had received a stab in the right hypochondriac region, extending two inches in the direction of the eleventh rib and between it and the external soft parts. He describes the wound as one of a dangerous nature, and likely to have proved mortal had it penetrated the cavity of the abdomen, which was only prevented by the interposition of the bone. Had the inflicting instrument not slid past the bone, the injury could not but have been penetrating when the consequences would have been fatal. It had evidently been inflicted with some force, the bone having been severely grazed. He considers Mr. Rainey's life to have been in great danger from this wound.

* Dr. Bholanath Bose.

All four prisoners plead "*not guilty*." The defence of Ramkoomar Gooho (No. 1,) and Dwarkanath Shah (No. 2,) is most voluminous. Ramkoomar states he has been falsely accused at the instigation of Mr. Rainey's *omlah*, and through the influence of a *taidnuvees* of the darogah's, an old enemy of his. He pleads that the prosecutor at first mentioned the names of no defendants; that he had been Mr. Rainey's gomashtah for two years and would have been recognized by that gentleman had he really stabbed him, (this Mr. Rainey denies, having stated in his deposition that he never saw the prisoner before). He further states that the witnesses are ryots of the prosecutor and all live at a distance from the place of the occurrence, and that their evidence is false and full of discrepancies; that some ten years ago he was the servant of Mohimachunder Baboo, who had a quarrel with the prosecutor, who used to make him a defendant in his cases; that he is an old man of 60 or 70 and nearly blind; and, lastly, that on the morning of the occurrence he was in Anund Shah's house settling accounts with him, and remained there till about six *ghurrees* of the day. The only plea that he attempts to prove by evidence is the *alibi*, the place being within a quarter of a mile of the spot where the crime was committed. This prisoner has already been imprisoned for five years on a charge of homicide and is said to have once belonged to a gang of thugs.

Dwarkanath Shah (No. 2,) pleads that he has been falsely accused by the connivance of the factory Amlah on account of a quarrel with Mr. Rainey about some lands; that he was in his house on the night previous to, and on the morning of, the occurrence till one *pahur* of the day; that the witnesses Nos. 4 and 5 never were in his service; that the evidence of the witnesses for

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the prosecution, who reside at a distance, is false and full of discrepancies; and that the prisoners Oollas Mullick (No. 3,) and Lol Mahomed (No. 4,) are not his servants. To prove the *alibi* and his other statements, he has had fourteen witnesses examined.

Oollas Mullick (No. 3,) and Lol Mahomed (No. 4,) plead that they have been named as defendants from motives of enmity. They admit that they have been in the service of the prisoner Dwarkanath, and that they slept in his house on the night preceding the occurrence.

Although the witnesses named by prisoners Nos. 1 and 2, speak to the *alibi* set up by them, their evidence is, in my opinion, totally unworthy of credit, the reasons stated by them for their having gone to the prisoners at that particular time being unsupported by probability. Prisoner No. 3 dispensed with all his witnesses, and No. 4, with all but two, who merely corroborate the fact that he was in the company of Dwarkanath Shah (No. 2,) that morning.

The law officer in his *futwa* pronounces Ramkoomar Gooho guilty, on violent presumption, of wounding the prosecutor with intent to murder him, but acquits the other three prisoners of the charges on which they have been committed, not placing any reliance on the truth of the statements made by the witnesses regarding them. I cannot concur in the latter part of this verdict, acquitting the three prisoners.

Without attaching much weight to the evidence of the witnesses Nos. 4 and 5, who are put forward to prove the conspiracy, I see no reason for doubting the testimony of the witnesses Nos. 1 and 2, who saw the four prisoners consulting together behind a clump of bamboos when the prosecutor passed along, and Ramkoomar Gooho run after and stab him with a spear. It must be remembered that these two witnesses are totally unconnected with the prosecutor; that they reside close to the spot where the crime was committed; and that the evidence of one of them was taken on the very day of the occurrence, and of the other on the day following, so that no time was allowed for the police or the factory servants, had they been so inclined, to make up evidence.

It is proved by the testimony of the witnesses adduced, that the four prisoners were consulting together just before the crime was committed; one of them is seen suddenly to rush after the prosecutor and wound him. The prisoners, when accused, offer a very lame defence supported by most improbable testimony, the place where they profess to have been at the time not being a quarter of a mile off. Moreover, it is admitted by Oollas Mullick and Lal Mahomed that they slept on the previous night in Dwarkanath Shah's house, who had a quarrel with the prosecutor. Taking all these circumstances into

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consideration, and after a calm and dispassionate consideration of the evidence of the witnesses for the prosecution, I can come to the single conclusion that all four prisoners are guilty.

I would convict Ramkoomar Gooho of wounding with intent to murder, and the other prisoners of being accessaries before and after the fact, and recommend that Ramkoomar Gooho and Dwarkanath Shah, whom I regard as the ringleaders, be sentenced to transportation beyond sea for life, and Oollas Mullick and Lal Mahomed to ten (10) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. E. A. Samuells.) The evidence for the prosecution in this case consists entirely of direct testimony, first, to the prisoners having conspired to murder Mr. Rainey; secondly, to their having assembled at a particular spot for the purpose of way-laying him; and thirdly, to one of the party having wounded him on the high road at the instigation and with the encouragement of the others. This evidence is not confirmed by any collateral circumstances. The darogah was on the spot within a few minutes of the occurrence, the assault having taken place close to the thannah; but the weapon with which the wound was inflicted has not been found: the prisoners have denied the offence consistently from the first. They have not varied in the defence they set up, and we have not even the slight presumption against them, which would have arisen from their attempting to escape.

The Law officer, apparently under a mistaken impression, that Mr. Rainey had recognized Ramkoomar Gooho convicts him, and acquits the others; but the evidence connects the whole four prisoners so completely, that it is impossible to make any distinction between them. If we believe that Ramkoomar struck the blow, we must also believe, on the evidence before us, that the other prisoners were present aiding and abetting.

I proceed to enquire then to what extent this evidence is worthy of belief: and first, as to the motive for the crime. On this head the only evidence is that of Mr. Rainey, who deposes, that the prisoner, Dwarkanath Shah, had asked him several times not to take the farm of a small share in a village of which he (Dwarkanath) claims the entire ownership. His taking it in spite of this request, is the only motive he can assign. Mr. Rainey, however, it appears, took this farm about 3 or 4 months before the occurrence of the assault; and he states, that he had not since been asked by Dwarkanath to resign it. He had never heard, he says, any whisper of an intention to maltreat him. There is no suggestion from the prosecution of any cause of enmity on the part of the other prisoners, their theory being, that the other prisoners, who are servants of Dwarkanath Shah, acted under his orders. The

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motive, which Mr. Rainey alleges for the crime, has thus, it will be seen, a remote origin; and there is an entire failure to show any continuance of bad feeling on the part of the prisoner Dwarkanath. We have no evidence of any conduct or language of his during the 3 or 4 months preceding the assault, which could give rise to a suspicion that he continued to cherish feelings of enmity towards the prosecutor: nor, indeed, have we any distinct evidence that enmity ever existed: for Mr. Rainey nowhere says that it did. Although, therefore, if the charge be brought home to the prisoners, the motive alleged may be accepted as a sufficient explanation of their conduct, its connection with the assault is too indistinct and uncertain to afford any antecedent presumption against them.

The first fact in order of time which is deposed to by the witnesses for the prosecution is the conspiracy. Two witnesses Kefaitoollah and Sheikh Bukhsee Mahomed depose, that they had been employed by the prisoner, Dwarkanath Shah, (who appears to be a land-owner and merchant) as *theeka* servants for one or two months: that on the evening before the assault he sent for them, and, in the presence of the other prisoners, proposed to them to murder Mr. Rainey during his daily walk promising them a reward; and alleging, according to Sheikh Bukhsee (for the other witness is silent on this point) that he was driven to make the proposal by Rainey's conduct in getting up suits and cases against him; that they both refused, and were allowed to go to sleep: that next morning, the prisoners woke them, and urged them again to commit the murder; but as they still refused, the prisoners went out alone, Lol Mahomed carrying a stick in his hand; that they shortly afterwards returned, and Dwarkanath then dismissed them from his service for their refusal to act as he had desired. They add, that as they were going along after their dismissal, they heard of Mr. Rainey having been wounded.

This evidence bears on the face of it marks of the highest improbability. It is *primâ facie* impossible, to believe, that the prisoner, Dwarkanath, who had three servants of his own, evidently ready and willing, according to the evidence for the prosecution, to do his bidding, would, without preface and without apparent reason, propose such a serious crime as that of the murder of an European gentleman, to two comparative strangers immediately before the time which he had determined on for its commission: that, on their refusal, he and the other prisoners should at once proceed to waylay their victim, without taking any precaution against the witnesses betraying them, and that they should turn these witnesses out of doors at the very time when the darogah was carrying on his investigation in the neighbourhood, without an attempt of any kind to secure their silence. The suspicion of falsehood, which necessarily

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attaches to this testimony, is moreover materially strengthened by the facts which are apparent from the official records produced; that one of the witnesses Kefaittoollah was formerly in the employ of Mr. Rainey's factory, and was punished in the year 1844, for bringing a false charge of having murdered his brother Hazaree Takadgeer against one Moteeoollah the servant of a zemindar of the name of Moheemachunder with whom the factory is stated to have had some quarrels, and that the other witness Sheikh Bukhsee Mahomed is the son of this Takadgeer.

The prisoner Dwarkanath Shah also adduces, what appears to be respectable evidence, to prove that neither of these witnesses have ever been in his employ; and we have no counter-evidence on the part of the prosecution. The Sessions Judge states, that he does not rely on the evidence of these witnesses; and the Government prosecutor in this Court, admits that he cannot ask the Court to credit their testimony, I have no hesitation in rejecting it as unworthy of belief.

The suspicion thus forced upon me, that some party, whether it be the police or whether, as the defendants allege, it be the factory Amlah, have been engaged in manufacturing evidence for the purpose of convicting the prisoners, must necessarily affect to a very serious extent any reliance which I might otherwise have been disposed to place on the direct testimony of the remaining witnesses.

That testimony, however, contains so much, that is in itself suspicious and inconsistent with ordinary experience, that I could not have convicted upon it under any circumstances. There are two eye-witnesses in the case, Sheikh Akber and Sheikh Bukhsee who depose, that while following Mr. Rainey along the road at some little distance, they saw the prisoners in consultation behind a clump of bamboos at the side of the road; that Ramkoomar followed Mr. Rainey and struck him a blow on the right side with a small stick about three feet long which had an iron head, and then fled into the village.

This evidence is supplemented by that of Sheikh Alum and Koran Puramanick, who state, that they also were passing along the Mowconee road; that they saw the prisoner Ramkoomar go after the Sahib with the stick in his hand; but that getting alarmed, they did not wait to see the result. Sheikh Alum says, that Dwarkanath Shah took the stick from Lol Mahomed and gave it to Ramkoomar; Koran Puramanick, that Ramkoomar himself took the stick from Lol Mahomed.

These witnesses appear, according to their own statements, to have been from 120 to 180 feet from Mr. Rainey, when the assault took place, and to have seen the prisoners from a distance of 25 or 30 feet.

Mr. Rainey himself deposes, that in his morning walk, he had stopped to look at some figures in a *thakoorbaree,* and had

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walked forward a few yards, when he received a sudden blow from behind and on turning round, saw a man with a short stick under his arm running up a lane toward the village; that he thought he was a madman, and called out to him to stop; but that receiving no answer, he walked on, and presently feeling that he was wounded, sat down on a log, and sent for the darogah. When the darogah arrived, he gave Mr. Rainey a cloth to tie up the wound, but his report to the Magistrate shows, that he did not himself examine the wound and no one else appears to have seen it at the time. Mr. Rainey went back with the darogah, and pointed out the spot where he had been wounded, but stated to him in an information which the darogah took down, that he had not recognized the man, whom he saw running away; and that he did not know the name of the weapon with which he had been wounded: but that it appeared to be a small stick and he supposed, it must have had an iron head. Mr. Rainey was then sent in to the station of Furreedpore in a palanquin. His deposition, however, was not taken by the Joint Magistrate until the 10th of February, the assault having taken place on the 31st January. The prisoner Ramkoomar Gooho was then present; and Mr. Rainey pointed him out as a man, whose shape and general appearance were similar to those of the man he had seen running away. From his evidence before the Magistrate and darogah, it might be inferred, that he had seen the face of the man who wounded him; but in the Sessions he distinctly states, that this was not the case. Doctor Bholanath Bose describes the wound as "superficial and extending for about two inches from behind forwards, downwards, and inwards in the direction of the 11th rib, and between it and the external soft parts to within a short distance of the cartilaginous termination of that bone." I should have inferred from this description, that the wound was a slight one; but Doctor Bose proceeds to state, that it was a very dangerous one, inasmuch as if the weapon had not been prevented by the bone from entering the abdominal cavity, it might have proved fatal, and he gives it as his opinion, that the wound was inflicted with a murderous intent, and probably by a spear *with a short handle.* It is evident, that Doctor Bose's evidence has been affected in no slight degree by what he had heard of the circumstances of the assault.

The only other evidence for the prosecution is that of Dhunnaoollah who was sent by Mr. Rainey to fetch the darogah. He did not witness the assault, nor does he mention the presence of the eye-witnesses.

The counsel for Ramkoomar has contended, that the Court have not the true facts of the case before them: that the whole story is false from beginning to end. That the wound is a slight cut over the ribs, which could not have been inflicted by the

instrument mentioned, and that the probabilities are that Mr. Rainey either wounded himself, or met with an accident of which he has taken advantage to endeavour to get rid of a troublesome neighbour. I do not see any reason to doubt, however, that Mr. Rainey's statement is perfectly truthful. The only question with me is whether, taking Mr. Rainey's statements to be strictly correct, the prisoners are the persons by whom or at whose instigation the wound was inflicted.

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Now, looking in the first instance at Mr. Rainey's own evidence, the question occurs how was it, if the prisoners were in consultation behind the bamboos when Mr. Rainey passed, he failed to perceive them? The attention of four other persons walking along the same road was attracted to them. Mr. Rainey seems to have been strolling along looking about him. He knew at least two of the prisoners. The supposition that they hid themselves as he passed, or that they came to the clump after he passed it, is inconsistent with the evidence of the four witnesses, Alum, Koran, Sheikh Akber, and Bukshee.

Then, again, Mr. Rainey's statement that he saw Lol Mahomed in the factory when he left it, is irreconcileable with the evidence of those witnesses who say that he was present in the morning when Dwarkanath endeavoured to persuade them to commit the murder, and that he and the others went out together, Lol Mahomed carrying a short stick in his hand; which it is evidently intended, we should infer, was the stick with which the wound was inflicted.

The place of the consultation is stated by the witnesses to be distinctly visible from the place where Mr. Rainey was wounded, and is apparently within 60 or 70 yards of it. Two of the prisoners are said to have advanced some distance with Ramkoomar, when he ran forward. How was it, when Mr. Rainey turned round to see who had struck him, that his attention was not attracted by these men, who must then either have been in the attitude of men who watch the result of a crime in which they are themselves engaged, or who must have been flying from fear of pursuit, on seeing that the murderer had missed his blow.

Further, although the Sessions Judge says in his remarks on the trial that Mr. Rainey denied that Ramkoomar had been in his service for two years as the latter in his defence alleged, I find no such denial on the record, Mr. Rainey does not appear to have been asked any question on this subject. It is clear from the map filed with the case that Ramkoomar's house is close to the factory and to the road along which Mr. Rainey takes his morning walk. It appears also that the factory has on one occasion prosecuted him; and although, therefore, Mr. Rainey says in his evidence that he does not know him, it is difficult to believe that he must not have been sufficiently

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acquainted with his appearance, as that of a near neighbour, to have recognized him at the time, if he was the man who struck the blow.

The portion, however, of Mr. Rainey's statement which it is most difficult to reconcile with the hypothesis of the prisoner's guilt is his description of the assault itself and the weapon with which the wound was inflicted. If Dwarkanath Shah did determine with the aid of Ramkoomar and the other prisoners to murder Rainey, is it probable the attempt would have been made in the manner stated? The use of a light stick about 2 or 3 feet long, with an iron head, not only was likely to render the result of the assault very uncertain, but necessitated a resort to close quarters which, in the case of an European, the prisoners would naturally have wished to avoid. Is it likely that when the murder was deliberately planned, as we are asked to believe, such a weapon would have been selected, and that only one of the party of four who went forth to aid in the commission of the crime should have been armed at all? I confess this appears to me quite incredible. If the talookdar had determined on murdering Rainey on the public road in broad daylight, in itself a most unlikely thing, the attack, in accordance with the habits of the people, would have been made by more men than one, and with weapons such as swords, hatchets, iron bound *latees* or spears, with which it might have been reasonably expected that resistance would at once be overcome.

Looking to the nature of the assault, the instant flight of the assailant, and the description of the weapon which Mr. Rainey saw under his arm as he ran away, it appears to me to be the most probable conclusion that the attack was altogether unpremeditated; and was the act either, as Mr. Rainey himself at first supposed, of a madman, or of some one who had been annoyed by his inspection of the figures at the *Thakoorbaree*, for it was immediately after this inspection, it will be recollected, that the assault took place.

None of the witnesses to the assault or conspiracy were procured for some hours after Mr. Rainey left his factory to proceed to Furreedpore. The eye-witnesses say they were present when the darogah arrived and lent Mr. Rainey a cloth to bind up his wound, but that through fear they did not at the time mention what they had seen to any one. How the darogah ultimately discovered them and obtained their evidence does not appear. None of the witnesses are inhabitants of Mowconee, though it appears, their houses are in a neighbouring village at no great distance, they are brought up in pairs; there being two witnesses to each fact which it was considered desirable to prove. This may of course be accidental; but when viewed in connection with the other suspicious features of the case, it gives rise to a doubt whether the arrangement

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may not have been adopted from fear of the additional facilities for detection of falsehood, which a larger number would have afforded. The story of these witnesses is evidently carefully moulded on the statement which Mr. Rainey had made to the darogah before he left. The short stick with the iron head is described in the same terms by every witness and the two eye-witnesses both depose circumstantially to the blow being struck on the right rib, though it is very unlikely that the witnesses should have taken such particular notice of the stick, when they were not aware at the time of the intention of those who held it, and the assailant being between them and Mr. Rainey at a distance of 150 or 180 feet, it is impossible the eye-witnesses could have known at the time anything further than that a blow was aimed at Mr. Rainey's back.

On the minor discrepancies and improbabilities in the witnesses' evidence which have been commented on by Counsel, I consider it unnecessary to touch. The foundations of their story appears to me to be so unsound, that it would not be safe to build any conclusions of guilt upon them. It is quite possible that a Bengalee talookdar and trader should conceive such a violent hatred towards a planter, and be himself so unscrupulous as to determine on murdering him. It is conceivable that he should employ his servants for this purpose, and even that he should determine to attack him by means of his servants in open day; but it is not consistent either with reason or experience to believe that he should employ a single old man to make the attack on the public road in the presence of several passengers who were well acquainted with him, with a slight and inefficient weapon, and still less credible is it that he should accompany the murderer to the spot, plant himself in full view of, and close to the road, hand the weapon to the murderer, otherwise behave in such a manner as to attract the attention of the persons passing along the road and then on the failure of his attack that he should await the arrival of the police without an attempt at evasion.

Improbabilities such as these (and I have passed over several without remark) would destroy all confidence in the evidence, even if an examination of the depositions of Kefaitoollah and Bukhsee Mahomed had not satisfied me that there has been fraud in the case.

The evidence which the prisoners have produced in their defence is of a much more respectable and reliable character than that for the prosecution; and the objection taken to it on the ground that it merely alleges an *alibi* at the houses of the defendants, which are close by, is without weight; for, under the circumstances, an *alibi* was the only evidence possible; and it is in the defendant's favor that they did not attempt to lay the scene of it at a distance. The evidence of the witnesses

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for the defence is also unusually circumstantial and bears strong marks of truth.

The prisoners must, therefore, be acquitted and discharged. The witnesses Kefaitoollah and Sheikh Bukhsee Mahomed will be committed without delay to take their trial for perjury, the prisoners and the two witnesses Hurishchunder Shah and Gobindchunder Shah who prove that they were never in Dwarkanath Shah's service, being made witnesses for the prosecution together with any other witnesses on the same point who may be adduced by Dwarkanath.

I cannot close this trial without remarking that the evidence of the witnesses in this case has been very imperfectly tested in the Courts below. Direct testimony, when unconfirmed by collateral circumstances, is of little value in this country. It should invariably be tested by a close and searching examination; and the collateral facts which come out in the course of the examination should themselves be made the object of separate enquiry. When Kefaitoollah and Sheikh Bukhsee Mahomed, for instance, deposed that they had been employed for one or two months in the house of Dwarkanath, and the prisoners denied the fact, it was the duty of the Magistrate to examine these witnesses carefully as to their antecedents, the circumstances under which they took service with the prisoner, the nature of their duties, the persons with whom those duties had brought them into contact, and other particulars of the same nature. A local enquiry into the truth of their statements on these various points, undertaken immediately either by the Magistrate himself or by a trustworthy officer, would then have enabled the Court below to form a confident judgment as to the general credibility of the witnesses. In like manner, Mr. Rainey should have been closely examined regarding his previous transactions with Dwarkanath and Ramkoomar, the connection of the factory with the villages whence the witnesses came, or with the owners of these villages. The eye-witnesses and others should have been questioned as to their antecedents, the persons to whom they first mentioned what they had seen, and the circumstances under which they had been induced to give their evidence. A minute examination and cross-examination ranging over a variety of incidents, would have presented such numerous points of comparison between the depositions of the different witnesses, that it would scarcely have been possible for false witnesses to have avoided contradictions and inconsistencies, which must have betrayed them.

Not only, however, were test questions of the nature above indicated, and the enquiries which ought to have been founded on them, wholly omitted in this case, but the examination of the witnesses on the points upon which they were prepared to speak is most meagre and unsatisfactory. Cross-examination

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does not appear to have been attempted. Several material points of the case are left in obscurity; and we have, in fact, no means afforded us of checking the statements of individual witnesses.

This is unfortunately by no means a rare occurrence in the cases which come before this Court; and it materially enhances the difficulties and disadvantages under which the Judges of an appellate Court must always labor. It cannot be too strongly impressed on the lower Courts, that it is their duty to take care that all facts within the witness's knowledge, which may tend to elucidate the case, shall be fully and clearly brought out in the depositions; and that means be afforded of judging of a witness's credibility by a judicious examination on collateral points. It is impossible that this Court can convict in cases, which afford any room for doubt, if they see reason to believe that the enquiry has been conducted below in a superficial or perfunctory manner.

REGULAR CASES.

JUNE,

1859.

REGULAR CASES.

JUNE, 1858.

PRESENT:

E. A. SAMUELLS, ESQ., *Judge*, AND H. V. BAYLEY, ESQ., *Officiating Judge*.

GOVERNMENT PROSECUTOR,

versus

HENRY EDWARD MURRAY.

West Burdwan.

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The prisoner was convicted of wilful murder on the dying declaration of the deceased, corroborated by strong circumstantial evidence, and sentenced to death.

A statement on oath by the deceased held not be a legal deposition as it was unsigned and recorded in the absence of the prisoner.

Admitted, however, as a dying declaration, the Magistrate's attestation being held to be sufficient.

CRIME CHARGED.—Wilful murder of Baboo Muddun Mohun Lall Lalla, late overseer in the Post Office Department, on the night of the 15th February, 1859, corresponding with 4th Falgoon, 1265, with a bullet, or bullets, discharged from a fire-arm.

Committing Officer.—Mr. H. W. Alexander, Assistant Joint-Magistrate of Raneegunge.

Tried before Mr. P. Taylor, Sessions Judge of West-Burdwan, on the 9th April, 1859.

Remarks by the Sessions Judge.—The original correspondence noted in the margin,* which is with the record, shews that the prisoner, being the son of a native woman, who was not joined to his father in wedlock, is not an European British subject, in terms of the Advocate General's opinion forwarded to this Court with the Circular Order of Government Commissioners No. 68, of the 29th January, 1859.

The only direct evidence of the fact in this case, is contained in the two depositions, on solemn declaration, given by the murdered man before his death, which, though not signed, in consequence of his having suddenly become too faint to hold a pen, have been fully proven by the witnesses named in the margin.†

The other witnesses named in the margin‡ all heard the deceased say that the prisoner had shot him before his said depositions were written, and

* Note from Mr. S. Wauchope, Superintendent of Police, Calcutta, to the address of Mr. Alexander, dated 24th February, 1859.
Letter of Mr. A. S. Wilson, Deputy Magistrate of Burhee to the address of Mr. Alexander, dated 23rd of February, 1859.
Note from Mr. Wauchope to the address of Mr. Alexander, dated 26th February, 1859.

† Mr. H. W. Alexander, Assistant Joint-Magistrate, sent for and examined by the Sessions Court. Lal Mahomed Burkundaz, witness No. 16, and Juggernath Chatterjee, Head mohurrir of the Assistant Joint-

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To render such a declaration admissible under Act II. of 1855, deceased must believe himself to be in danger of impending death, but it is not necessary he should express his sense of danger. It may be inferred from the nature of the wound and the attendant circumstances.

Drunkenness cannot be successfully pleaded in mitigation of punishment, unless it is such as to render the prisoner incapable of forming an intention, and to exclude the idea of deliberation or design.

The power of mitigation of punishment vested in the Court by Reg. XIV. of 1810, is not a capricious power, but is governed by well defined principles, and valid

Magistrate, witness No 17. Two of the writers of the depositions.

‡ Mr. J. R. A. D'Cruz, witness No. 2.

Mr. H. A. Deefholts, witness No. 18.

Shiddhanarain, witness No. 6.

Sobha Singh, witness No. 23.

some of them heard the same dictated by him, though they were unable to recollect all he said.

The first deposition written by Dulleeplol Lalla witness No. 15 (not examined by the Sessions Court, because he did not appear until the trial was nearly concluded) Lal Mahomed Burkundaz witness No. 16, and Juggernath Chatterjee witness No. 17,* was to the following effect.

"Somewhere about 10 o'clock, Mr. Murray came to me. My servants were all there and saw (him). He salaamed to me and left me. He said, 'You have had much annoyance to-day,† go to sleep.' I did so, and he went to sleep (too).‡ At about 1 o'clock, the Saheb came back, and shooting me with ball, or shot, ran away. I ran after him and saw that Mr. Murray was running away, when I got outside the door of my house, as soon as I got to the door of it.§ Close by the godown (of the Post Office) I fell down and began to call out, 'Soba Sing! Soba Singh!' After a little time or about three minutes, that person came up to me and on his arrival took me up in his arms, and placed me upon his *charpaee*. After that Messrs. Deefholts and D'Cruz, having come and seen me, the latter went for the Doctor, and the former began to converse with me. When the Chuprassees brought me to this place, those two Sahebs saw them do so. This evening, at about 8 o'clock, I was in Mr. D'Crûz's tent, with his wife and child and Mr. Deefholts, when the last named gentleman produced a picture (Daguerreotype) of his wife, which he shewed to us. Mr. Murray (prisoner) said, 'Do you also have your picture taken.' Then I said to him, 'Do you also have yours taken.' After that, I went away. Murray Saheb, subsequently, came to my house, and said, 'It is past 10 o'clock, go to sleep, and I am going home (to do so) too.' A prostitute named Diljan, with whom that Saheb (prisoner) was (or had been) intimate, was sleeping with me. Yesterday and this night, my servant Jankee brought her to me, and while I was sleeping with her, that Saheb (prisoner)

* This witness wrote the usual heading and mention of solemn declaration, after Dulleeplôll and the Burkundaz had begun the deposition.

† From the effects of physic.

‡ There is a word illegible in this sentence, but the meaning appears to be as stated.

§ These appear to be mere repetitions written down by the stupidity of the scribe Dulleeplol, who seems also to have put them in the wrong place. From this sentence, the witness Lall Mahomed Burkundaz began to write.

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seeing her with me, shot me. He fired his gun *(bundooq)* twice. (After that deponent said.) It appears to me that it must have been a pistol, but I cannot say with certainty whether it was a gun or a pistol. When he shot me, I saw the face of that Saheb (prisoner) distinctly. I cannot say for certain whether the woman, who was with me saw that Saheb or not, but she was sleeping by me when the shots were fired, and when I was hit by the bullet she fled. However, there was no one else present * My *charpaee* was adjoining the door, and when that Saheb (prisoner) *jumped up* after firing upon me, in consequence of its being a moonlight night, I saw him distinctly. The ball I received struck me in the stomach. I have been intimate with that woman (Diljan) for fifteen or twenty days.† On the 13th instant, Mr. Murray said to me, 'Why do you have connexion with that woman?' I replied that she was a prostitute and that, such being the case, I would certainly‡ have connexion with her (if I liked). The Saheb then said 'Very well,' 'never mind.' When that conversation took place, no one but that Saheb (prisoner) and I was present."

* Here there is a repetition which need not be given.

† Here the hand of the witness No. 17, Juggernath Chatterjee appears again.

‡ *Albuteh oos kee pas jaoonga,* are the words here.

reasons must be assigned for its exercise. No legitimate grounds were considered to exist in this case either for mitigation of punishment or for a recommendation to mercy.

The 2nd deposition does not appear to have been necessary, but the Assistant Joint-Magistrate thought so, and therefore had the deceased re-sworn and re-examined, and his statements written down again by the witness No. 17, who, it appears, availed himself largely of the contents of the 1st deposition, in preparing the record, for a great portion of the latter is textually the same as the former.

The only important differences are as follows.

1st. Where the deceased said, in his first deposition, that, when the prisoner came to visit him about 10 o'clock, his servants were present and saw (him), he observed, in his second, that his servants had gone to sleep at that time (and consequently could not have seen him). 2nd, where in the first deposition, the deceased mentioned his going to sleep after Mr. Murray's first visit, the words "*it was then past* 12 *o'clock*" were added in deposition No. 2, and 3rd, the remarkable passage in the 1st deposition about the deceased having recognized the prisoner *when he jumped up* after having shot him, is omitted in deposition No. 2.

The discrepancy No. 1, probably arose from better recollection on the part of the deceased, because the evidence of his servant Jankee Kahar, witness No. 5, has shewn, that it was more consonant with fact than that which he first made. The addition No. 2, does not appear to be of much consequence,

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though the woman Diljan, witness No. 20, has said that the deceased and herself went to sleep at about 11 o'clock.

The omission No. 3, might easily have been made by the deceased in his 2nd deposition out of mere forgetfulness, but some portion of the evidence of the civil Assistant Surgeon, Dr. Bow, witness No. 7, appears to confirm the truth of the statement omitted.

One little circumstance, viz. the necessity of a Colt's revolver being re-cocked, before it can be fired a second time, shews that the deceased must have been very close to the murderer, when he awoke and saw him.

Circumstantial evidence.—The circumstantial evidence was, in substance, as follows.

The first witnesses who went up to the deceased on hearing him call out that he had been shot, have been mentioned above in the margin. Mr. J. R. A. D'Cruz, No. 2, went to the lines and brought Dr. Bow, witness No. 7, who, finding that the wounded man was likely to die very shortly, went with Mr. D'Cruz, to bring the Assistant Joint-Magistrate who, on his arrival at about 2 o'clock, took the depositions which have been described above. It appears from that officer's statements that Duleeplol, the first person who begun to take down the deposition No. 1, wrote so badly that he called for another penman whereupon the burkundauz, witness No. 16, presented himself, and that, after that came the head mohurrir, witness No. 17, who not only headed and completed deposition No. 1, but also drew up No. 2, in the manner already described. Mr. Alexander has stated before this Court, that the demeanour of the deceased was as calm as could be expected under the circumstances, and that he appeared to be animated by no anger against the prisoner. This latter allegation is supported by Dr. Bow, witness No. 7, but contravened by the witness No. 17, Juggernath Chatterjee, head mohurrir, who said that the deceased *was* irritated against the prisoner, though his evidence was given in a sufficiently clear and intelligent manner. The wounded man expired, according to Mr. Assistant Joint-Magistrate's account, at about half-past 4 o'clock on the morning of the 16th February; but immediately after his depositions had been taken, that officer, with Dr. Bow, Mr. J. R. A. D'Cruz, witness No. 2, Mr. Deefholts, witness No. 18, and others, went to examine the house of the deceased. The appearances inside and outside thereof, were as follows.

The *verandah*, which was an open one, having a room debouching into it on each side, was empty, and the door of the inner chamber was open, with a *jhamp** raised in front of it. The bed upon which the deceased and Mussamut Diljan, witness No. 20, had been sleeping when the fatal shot was fired, was

* Mat *purdah*.

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just inside the door, on the left hand side, with the head and pillows thereof away from it, towards the north. About the middle of the semul cotton mattrass, but a little towards the head of it, was a ball hole, out of which Mr. D'Cruz extracted an entire conical bullet (No. 2,) of a navy size Colt's revolver pistol, quite clean and uninjured, except that it bore marks of the rifling of the barrel, from which it had been discharged. At the same time, Jankee Kahar, the servant of the deceased, picked up, from the bed, a fragment of another bullet of a like kind (No. 1,) of which the residual portion could not be discovered. There was no blood in or around the ball-hole in the mattrass, but some was found between the house of the deceased and the post office, which are about forty yards asunder. No trace of any third bullet was apparent any where. Just round the corner of the house, to the left as you go out of the door, where there is a small lane leading to the Bazar, and at about six yards distance from the said door, was found a pair of shoes of common black bazar leather, tied with ribbon, the toes of which were pointed to the south, as if the person who had removed them from his feet had done so just before he stepped cautiously, round to the door of the deceased's house. I have been unable to discover who first saw these shoes, but all the witnesses who first went to the house in question, including the Assistant Joint-Magistrate, the Civil Assistant Surgeon, witness No. 7, Mr. Deefholts, witness No. 18, Shiddhanarain, witness No. 6, and J. R. A. D'Cruz witness No. 2, concur in saying that they saw them in the place described, and nearly about the same time. These shoes fit the prisoner, for I saw them put upon his feet myself, and had been sworn to by the person who made them and sold them to him a few days before the murder, viz. Agam Moochee, witness No. 14, as well as by Mr. J. W. D'Cruz, a witness for the defence. Other witnesses as Mr. C. S. Rose, No. 21, and Mr. Coello, No. 26, have also said that they are like the shoes that the prisoner wore just before, and at the time of the murder; moreover, in his defence before the Assistant Joint-Magistrate, the prisoner virtually acknowledged that the said shoes were his, for he, at first said that some one might have taken his shoes away from his place and put them there and then tried to make out, by alleging loss of a pair of shoes bought from Agam Moochee, some time before the murder; that those found near the house of the deceased must have been the said lost shoes, placed there by the person who had made away with them.

The surgical portion of the evidence of Dr. Bow, witness No. 7, proves that the ball received by the deceased must have entered his body on the left side, low down, and came out on his right, rather high up, and that, as it passed through his small intestines, stomach and liver, he could not have escaped death therefrom.

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In the course of his said evidence, Dr. Bow observed, that the skin round the ball hole on the left side, had the appearance of being scorched, a circumstance which should be considered in conjunction with the statement made by the deceased, in his 1st deposition in regard to the prisoner having *jumped up* (as from a kneeling posture) after he had wounded him. Dr. Bow also stated, in answer to questions put by this Court, that he believed the entire bullet, No. 2, to be that which had passed through the body of the deceased, before it entered the mattrass, because he had found, by subsequent experiment, that a Colt's revolver slug fired at a mattrass of the same kind, from a short distance, and without the intervention of any object equivalent to a human body, would pass completely through it. He also considered the cleanness of the said entire bullet to have been caused by the abstersion thereof, by the skin, on making its exit from the body of the deceased, as he had found to be the case in experiments he had since made upon dogs.

Finally, Dr. Bow said, that he believed the fragment of a bullet or slug (No. 1,) found at the same time with No. 2, to be a portion of a similar conical slug, which had been cast in the same mould with it. He based this opinion upon a transverse mould mark, which appeared upon both slugs, or bullets.

After the appearances at the house of the deceased had been ascertained, the Assistant Joint-Magistrate went off, with Mr. D'Cruz, witness No. 2, and some of his Police officials, including Kaloo Sheikh, witness No. 3, to apprehend the prisoner at the Telegraph Office, which is not quite half a mile distant from the Post Office, in a north-westerly direction of the side of the Railway Grand Trunk junction road.

The party went to the Telegraph Office, because Mr. J. R. A. D'Cruz stated that the prisoner would most likely be found there. He was so found and duly apprehended, smelling of liquor, and in an excited state, and unable to account for his shoes, socks (said, on oath, to be usually worn by him, by Mr. Coello, witness No. 26,) and that (afterwards found in the empty tent of Mr. Carter, a little to the south-west of the Post Office).

An altercation ensued about the boots of Mr. Wright, witness No. 24, which the prisoner took possession of without that individual's permission, when apprehended, which is not in fact, of any consequence, though the prisoner has tried to make it so, and which will be found fully detailed in the latter part of the depositions of Messrs. Alexander, J. R. A. D'Cruz, witness No. 2, and Mr. Wright, witness No. 24, above-named.

It was the prisoner's object to make out that he wore the boots of the last mentioned individual, the night before, i. e., at the time of the murder, but he has not at all succeeded in doing so, and the shoes, found near the house of the deceased, just after it, have been proven to be his by the unexceptionable evidence before alluded to.

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Rikab Allee, Chuprassee of the Telegraph Office, witness No. 25, deposed that no one was in the room in which the prisoner was apprehended up to 11 o'clock, on the night of the murder, because he had then looked into it and seen it empty.

Early the next morning, after the prisoner had been placed in custody at the thannah, Messrs. D'Cruz and Deefholts, witnesses Nos. 2 and 18, when out for a walk, saw him there and went to speak to him. Mr. D'Cruz has since affirmed, in his deposition before the Assistant Joint-Magistrate, that he asked him what he had done, and why he had shot the deceased, upon which the prisoner said that *there were no eye-witnesses and that it* (the murder) *could not be proven against him.* On Mr. Deefholts being questioned about this conversation, by this Court, he says that it was he who asked the prisoner the above questions, when he replied that he had not shot the deceased. He added that Mr. D'Cruz might have asked him the same questions, and obtained the remarkable answer above cited, as he had more talk with the prisoner than himself, but that he did not hear it given.

A short time after this, Messrs. D'Cruz and Deefholts busied themselves in looking for the prisoner's hat, in the Post Office compound, and not finding it, went to the tent of Mr. Thomas Kiernander, witness No. 19, which was a short distance to the south and west of that in which they resided, and found him with a Mr. D'Guerra, therein. Mr. Deefholts asked Mr. Kiernander whether the prisoner had been with him the night before, as he had heard talking in that direction, *when he alleged that he had not.* After this, Mr. D'Cruz, who had been giving an account of the murder to Mr. D'Guerra, asked Mr. Kiernander if he had a revolver, and where it was. He was apparently vexed at the questions and said that he had no such weapon, and that Mr. D'Cruz was a very funny man to ask him for one, and asked him whether he thought that if he had had such a weapon, he would have lent it to another for the purpose of taking a man's life. He also wished to know who Mr. Murray was. Here it is as well to mention that when Mr. Kiernander subsequently, gave full depositions before the Assistant Joint-Magistrate and this Court, in regard to a conversation which the prisoner had with him in his tent, on the night of the murder, he affirmed that he had told Mr. D'Cruz of the said visit, when he and Mr. Deefholts came to him the morning after. A reference however, to the supplementary depositions of Messrs. J. R. A. D'Cruz and H. W. Maylark (witness No. 13,) taken by me on the 8th of April, will distinctly shew that Mr. Kiernander must have told a falsehood in making the above averment, because he gave the same denial of knowledge to Mr. Maylark on the 17th, that he had given to Mr. Deefholts on the 16th of February, and there-

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after, stung by conscience apparently, made a clean breast of it to the former individual on the 20th, and had his deposition taken by the Assistant Joint-Magistrate on the 21st idem.

After Messrs. D'Cruz and Deefholts left Mr. Kiernander, they went to breakfast, during which it occurred to Mr. D'Cruz that he had seen a revolver pistol case in the room of Mr. Coello, witness No. 26, in the Post Office (close by.*) Upon this, he went with Mr. Deefholts to the said individual's room, and calling his bearer, asked him about it. On the box or case being described, the man said he had put it into the drawer of the desk, from which it was forthwith taken out and examined. On its being opened, no pistol was found in it, and there were marks on the right hand side of it, in front, which plainly shewed that it had been broken open. The right hinge thereof was also in a fractured state. The box was replaced in the desk from which it had been taken, and Mr. D'Cruz began to get ready to go and inform the Magistrate. At this juncture, Mr. Deefholts walked to the desk abovementioned and took up therefrom a piece of paper (No. 9,) on one side of which was written a direction to the station-master in his own hand-writing, and, on the other, the following unfinished letter.

* Mr. Coello was absent with a detachment at that time and returned on the 16th after hearing of the murder.

"My dearest and beloved sister Harriet,

"This this the last time you will ever *here* (sic) from me. I hope you will forgive me for not having written to you from such a long time. I was quiet.. .. .. .."

Mr. D'Cruz, it appears, was so struck with this, that he took the paper out of Mr. Deefholts' hand before he had finished reading it. Neither could recognize the hand-writing of the unfinished letter, but both recollected that the paper on which it appeared, formed the moiety of a note, which Mr. Deefholts had written to the station-master at Mr. D'Cruz's dictation, about three packages which that witness expected from Calcutta, and which note had been given to the prisoner the night before, for presentation that morning, after the conversation about the Daguerreotype picture, mentioned in the deposition of the deceased (to which both Messrs. D'Cruz and Deefholts have deposed) had taken place.

Both the said witnesses have affirmed that the contents of the said note, to the station-master were to the best of their recollection as follows.

"*To the Station Master, Raneegunge.*

"SIR,—Please deliver to Mr. Murray three packages that will come from Calcutta to my address, and oblige,

"Yours faithfully,

"J. R. A. D'CRUZ."

It is convenient to mention, here, that the prisoner was seen by Degumber Puttronuvees, witness No. 9, to tear up, chew and spit out, the 2nd half of the above note (fragments No. 10,) while sitting in the *verandah* of the Assistant Joint-Magistrate's cutcherry, on the 16th or 17th of February, and that Mr. Deefholts, witness No. 18, has sworn to the words "*three*," "*the*," the letters "*utta*," being a portion of the word "*Calcutta*," and the letters "*ge*" being to all appearance the last syllable of the word "Raneegunge," found upon the said fragments as being in his hand-writing.

On the 16th of February, the Assistant Joint-Magistrate ascertained that the prisoner had been drinking brandy at the Raneegunge Hotel shortly before the murder. The depositions of Mr. C. S. Rose, son of the Hotel-keeper, No. 21, shows that he took brandy twice, with some interval of time between; that he came at about a quarter to 9 o'clock and went away at about 25 minutes to 11; that he talked in his usual manner; that he had shoes upon his feet very like those (No. 6) which were found near the house of the deceased; and that he went away quite sober.

The depositions of Lungutram Behra of the Hotel, witness No. 22, prove that the prisoner afterwards came to him at about half-past eleven, and took another glass of brandy, and lighting his pipe went away. The same witness has also said that he did not, at that time, see any pistol in the prisoner's possession.

On the 17th of February arrived Mr. H. W. Maylark, witness No. 13, who, after questioning Mr. T. Kiernander as before mentioned, deposed that he had made over the pistol, No. 11, in its case, No. 8, to Mr. Coello, witness No. 26, on the occasion of his going down to Calcutta, some time before the murder; that it was at that time loaded with five conical slugs and one round bullet; that he warned Mr. Coello of this; and that there were other persons present at the time, whose names he did not recollect, as he was hurried and anxious to be in time for the train. The same witness, in answer to questions put by this Court, identified the entire bullet (No. 2) as, to all appearance, one of those belonging to his said pistol, but stated that he could not be certain about the fragment No. 1; that he invariably put one round bullet into his pistol, when loading all the chambers thereof, and that he, sometimes, used certain smaller slugs, which were in the case, with paper wrapped round them, to prevent their falling out of the chambers. He also produced the key of the pistol case with which he locked and reopened it before me, and observed that one hinge thereof was in a fractured state, when he made over the said case to Mr. Coello. The last named individual supported the above evidence, but did not recollect hearing Mr. Maylark say, that

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the pistol was loaded when he gave it to him. He also swore that no one but the prisoner and himself was present when the pistol case was made over; that the latter was heavy as if it had the pistol in it; that he had tried to open it on a certain occasion, and could not; that the unfinished letter upon the half note, No. 9, was in the prisoner's hand-writing which he had often seen; that the shoes (No. 6) were very like those that he had latterly seen upon the prisoner's feet; and that the latter was in the habit of wearing stockings (as before mentioned).

On the 20th February, (Sunday) the pistol No. 11 was given up to the Assistant Joint-Magistrate by the witness Abhoy Napit No. 10, and the Nazir Gunesh Lall Miser (sent for and examined by the Sessions Court). The witness No. 10, subsequently pointed out the place where he found it to the native Deputy Magistrate, Kantee Chunder Chatterjee, as shewn in the small map drawn up by that officer, which is with the record. Perusal of the above witness's depositions before the Assistant Joint-Magistrate and this Court, will shew, that he first mentioned another place, viz, a refuse heap outside the house of a mookhtear named Sreeram Bhuggut, who lives in a very short distance from the Nazir, and very far north of the true locality of the discovery of the pistol, but that he, pretty evidently, did so at the suggestion of that functionary, who was anxious to conceal the fact, that he had a concubine, whom the witness had been taking home to her house in the immediate vicinity of the true locality. Perusal of the deposition of the same witness, in conjunction with those of Heeroolall Samunto, and Rambisto Chatterjee, Nos. 11 and 12, will also show that the pistol was, in fact, found by Abhoy on the previous Thursday; that it had been made over, for a prospective consideration, to Heeroolall, who showed it to Rambisto, who, as it was cocked, accidentally discharged one barrel in handling it; and that it was not presented to the Nazir, until Heeroolall had from fear and inability to understand its management returned it to Abhoy.

As the Nazir Gunesh Lall, when examined by this Court, acknowledged that he had a concubine living very near the place pointed out by Abhoy to the Deputy Magistrate, and no other was indicated by the said witness to that officer, there can be no reasonable doubt of the pistol having actually been found there.

The road of the side by which it was found was the 2nd Bazar road running in a northerly direction, from a little distance to the west of the Post Office (see map) and, to arrive at that place, a small connecting road had to be traversed.

Musst. Diljan, witness No. 20, lives by the side of the said 2nd road; some little distance to the south of where the pistol

was found, and the said road debouches into the Grand Trunk junction ditto, still further south, which leads to the Telegraph Office, about quarter of a mile north-west. 1859. June 23. Case of HENRY EDWARD MURRAY.

The second road leads, in a northerly direction, to the Thannah, Police Chowkee, and the houses of the Nazir and Sreeram Bhuggut Mookhtear.

The deposition of the Assistant Joint-Magistrate proves that the prisoner's felt helmet hat (No. 14) sworn to by various witnesses, was found in an empty tent of Mr. Train Master Carter, which stood in the same line with that of Mr. Kiernander, witness No 19, on the extreme verge of the Grand Trunk Road, east of the 1st Bazar road, which runs towards the north from very near it

It is convenient to mention here that the tent of Messrs. J. R. A. D'Cruz and Deefholts was to the south of the Post Office, at about the distance of twenty-eight feet from it, and so exactly behind it that the house of the deceased, which is about forty yards to the north thereof could not be seen therefrom; that the tent of Mr. Thomas Kiernander was about thirty-nine feet south-west of that of Messrs. D'Cruz and Deefholts, and that of Mr. Carter about thirteen feet to the westward of the latter. The hotel is about one hundred yards to the east of the Post Office, and was, at that time, most quickly reached from the latter, through an opening which had been broken in the railing of the compound, at the south-eastern corner thereof.*

* See depositions of Messrs. Deefholts and Kiernander before the Sessions Court.

Four barrels or Chambers of the pistol (No. 11,) had been discharged, for they had been black with powder. Three shots had evidently (from a peculiarity in the construction of the weapon, by which the cylinder cannot be turned backwards at half cock) been fired consecutively, and one (that, apparently, accidentally discharged by the witness Rambisto) had, as clearly, been fired after the pistol had been half cocked, and the cylinder thereof turned wholly round, one or more times, possibly by the person who fired the three shots, but more probably by the witnesses Abhoy, and Heeroolall, before Rambisto took it into his hand and that because there still remained two conical slugs in the pistol, one on each side of the 4th ball discharged. One conical slug, like those still in the pistol, is still in the case, and exactly fits the chambers of the weapon.

The construction of the pistol with the above particulars, and the necessity of its being cocked every time it is fired, were carefully explained to the law officer, as will appear in his *futwa.*

On the 26th February, as before stated, Mr. T. Kiernander witness No. 19, being pricked by his conscience, came forward and his deposition, taken on the 21st and repeated before the

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Sessions court, set forth that on the night of the murder, between the hours of 11 and 12, as nearly as deponent could guess, the prisoner came into his tent, smoking the pipe No. 15, which was left there by him and produced by deponent; that he was so tipsy that he fell repeatedly from a chair which he took; that he had a loaded and capped revolver thrust between his shirt and pantaloons, on his right side; that he asked for food and got it; that he complained of his step-mother, as keeping him away from his father's house and preventing his advancement; that he said he would either shoot himself, *or some bloody nigger that night*,* in consequence; that Mr. Coello and others had hurt his feelings about a woman; and that the deceased had deprived him of her; that he bore them, however, no malice and had visited the deceased at 10 o'clock, *and been very friendly with him.* The said witness further stated, that the prisoner read him a letter which he had received from Mr. Coello, and particularly one passage thereof, viz. "*Damn me! if you are indifferent to me I can be the same,*" which he considered insulting and about which he asked his opinion; that the deponent, to pacify him, said that he did not think that it was insulting; that he besought him not to kill himself, nor any one else, and that prisoner affected to make a joke of what he had said, in that regard, and notwithstanding the deponent's endeavours to get him to remain and sleep in his tent or that of Carter, persisted in going off (as he said) to the Telegraph Office. It is also shewn by this witness's depositions that he never got out of his bed during the whole time prisoner was with him, and that, although about twenty minutes after his departure, he heard three successive shots fired, and some one call out "Sobha Singh!" "Sobha Singh!" "I am shot by Mr. Murray." He never attempted to go and see what was the matter, but quietly lighted a cigar and after discussing the same, went to sleep.

* These two words only appear in the deposition given before this Court.

The above witness has, moreover, stated in his deposition before this Court, in answer to a question, that he *heard the prisoner say that his sister Mrs. Scott's name was Harriet.*

The witnesses named in the margin†, all testified to the simultaneous intimacy of the prisoner and deceased with Musst. Diljan. Most of them said that there appeared to be no bad blood between them about it, but one of them, viz., J. R. A. D'Cruz, mentioned,‡ that the prisoner had once observed that he did not like the deceased much, because he had taken the said woman away from him.

† Mr. J. R. A. D'Cruz,
Mr. J. Coello,
Mr. T. Kiernander,
Mussamut Diljan.

‡ Before the Assistant Joint-Magistrate.

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All of them agreed in allowing that Musst. Diljan was a common prostitute, and would go to any one, and some acknowledged, in answer to questions put to them by the prisoner, that they had seen her in company of both prisoner and deceased, at the same time, and that the latter had even offered his services to procure her for the prisoner whenever he wished. Mr. Coello said that he had made the prisoner promise to give up visiting the said woman, and once driven her father away from the Post Office, when he had come to call the prisoner, with a whip.

Musst. Diljan herself alleged, that she had latterly given up the prisoner for the deceased, and that the former had often reproached her for not coming with him when he wished it, though he did not openly object to her going with whoever paid her, the deceased included.

She further stated that the prisoner had once almost forced her to go to him at the Post Office, by threats of bringing European Soldiers to give her a shaking, &c., *and that he had wanted her to go to him on the very night of the murder.*

She acknowledged that she was sleeping with the deceased when he was shot, but denied having heard the firing, or seen the prisoner. This she endeavoured to account for by alleging, that she had wrapped up her head in clothes, and was fast asleep at the time. She, nevertheless, affirmed that she had gone out of the door with, or just behind, the deceased when he pursued the person who shot him, but that she saw no one flying before him.

The witness Jankee Kahar No. 5, who was servant to the deceased, stated that he took the woman Diljan to him at about 9 o'clock; that the prisoner came up to him, as he was washing his hands about half way between the house of the deceased, and the Post Office, at about 10 o'clock, and asked him whether his master was asleep, and, that, upon his telling him that he was, he went back again to the latter place, and that he (deponent) retired to rest shortly afterwards.

The witness Roopun Mehter, No. 31, deposed to the finding of the prisoner's old boots (No. 12) in an unfinished room at the Telegraph Office, and witness No. 8, Shebuk Singh Chowkeedar, to the finding of the pistol case, No. 8, in Mr. Coello's room, at the Post Office, by the darogah.

The main foujdaree depositions of all the European and Eurasian witnesses, which were written in English, were the same as those which they have given in the same language before this Court, but they contained a great many answers to questions put by the Assistant Joint Magistrate and the prisoner, which have not been repeated by me.

The foujdaree depositions of the native witnesses were also, on the whole, in accordance with those which they have given before this court.

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European, Eurasians, and Natives, have all sworn that they actually gave the said previous depositions, and those who saw the articles from Nos. 1 to 15,* at that time, have recognised them as the same here. The inquest has also been duly sworn to by the appropriate witnesses.

The prisoner's defence, before the Assistant Joint Magistrate, acknowledged that he was amorously acquainted with Musst. Diljan; that the deceased stood in a similar position towards her; that he was in the tent of Messrs. D'Cruz and Deefholts on the night of the murder, and there received a note, written by the latter, for presentation to the station master about the packages expected by the former; that he afterwards went to see the deceased at his own house at 10 o'clock; that he was at the hotel, where he drank brandy; and that from thence, he went to Mr. Kiernander's tent, and after that, to the Telegraph Office where he was apprehended. He also (as before stated) virtually acknowledged that the shoes which were found close to the house of the deceased were his, and had been bought by him from Agam Moochee, witness No. 14.

He denied that he had any quarrel with the deceased, about Diljan, and affirmed that it was quite improbable that he should have shot him on her account, as he (deceased) had himself offered to procure her for him; that, when he was in the tent of Messrs. D'Cruz and Deefholts, the deceased had told him that he was going away next morning to Kotaldeeh, to meet his newly married wife, and mother; that he had, for sometime, left off visiting Diljan, in consequence of a promise not to do so that he had made to Mr. Coello; that he found the deceased alone when he went to see him at 10 o'clock; that he went direct to Mr. Kiernander's tent from the Hotel; that he must have dropped the note which Mr. D'Cruz had given him for the station master in Mr. Coello's room, when he took his handkerchief out of his coat pocket; that the unfinished letter on the back of the moiety thereof (No. 9,) found in the said room, was not written by him, though the hand-writing resembled his a very little; that the torn fragments (No. 10) were those of a bit of foolscap paper, about six inches long and four broad, having something written upon it in Mr. Deefholts' hand,

* No 1, Fragment of bullet.
„ 2, Whole bullet.
„ 3, Mattrass.
„ 4, Pillow.
„ 5, Chudder of deceased.
„ 6, Shoes of prisoner.
„ 7, Another pair made by Agam Moochee, sent for comparison.
„ 8, Pistol case.
„ 9, Half note.
„ 10, Fragments of other half of ditto.
„ 11, Pistol.
„ 12, Pair of old half-boots of prisoner.
„ 13, Box of prisoner.
„ 14, Hat of prisoner.
„ 15, Pipe of prisoner.

which he had picked up in the Post Office compound; that he tore up and attempted to destroy, and threw away the same in the verandah of the Cutcherry because he had written some indecent poetry upon the back thereof; that Mr. Kiernander's deposition was a made up story, and intrinsically improbable, for reasons given; that, if he had shot the deceased, Musst. Diljan who was sleeping with him at the time must have seen him; that some body else might have put his shoes where they were found; that he had never seen the pistol (No. 11) before; that he was wearing his old boots (No. 12) when the murder took place; and that he was so much intoxicated that night that he was unable to remember where he had put his socks and hat.

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The prisoner's defence, before this Court, makes the same admissions as were made by him before the Assistant Joint Magistrate, with the exception of the virtual one in regard to the shoes (No. 6), but repeats the allegation of his having lost a pair a few days before the murder. He also repeats all the exculpatory averments which he advanced before with amplifications, and further states that it was after eight when the deceased left the tent of Messrs. D'Cruz and Deefholts; that when he went over to him at 10 o'clock, he found his servant slumbering in a *palkee gharry* and asked him whether deceased was sleep; that on the said servant saying he was, he (prisoner) went and awoke him, and had some conversation with him after which he told him to go to rest as he had been much troubled by his medicine, and left him; that he was alone at that time; and that he (prisoner) could not have asked Musst. Diljan to visit him on the night of the murder because she was then suffering from disease.*

All the rest of the defence is mere special pleading, based upon certain probabilities which, though it shows considerable acuteness and appreciation of the difficulties of his position on the part of the prisoner, is of no real force, when opposed to the very consistent evidence that has been brought against him.

* This denied by Musst. Diljan.

The witnesses for the defence named in the margin,† say nothing that can exculpate the prisoner, but No. 33, who is the father of Musst. Diljan, affirms that his daughter preferred the deceased to the prisoner because he paid her more generously.

† No. 32, J. W. D'Cruz,
„ 33, Narkor Naik,
„ 44, Mr. L. Rebeiro.

The *futwa* of the law officer finds the prisoner guilty of the crime charged against him *bu zuni ghalib*, or on violent presumption, and declares him liable to *seasut* (or the most severe punishment, including death) at the discretion of the Hakim.

In this verdict I generally concur, though I consider the

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proof advanced by the prosecution to be full and legal. No important exception can be taken to the depositions of any of the witnesses, but Mr. T. Kiernander and Musst. Diljan.

With regard to the first individual, it is necessary to observe, that although he has made four false statements, viz., one to Mr. Deefholts, one to Mr. Maylark, and two to me, there can be little doubt of the truth of all that he has said, on oath, in regard to what happened when Mr. Murray visited him in his tent on the night of the murder, for the following reasons.

1*st*. Because the said statements contain particulars that could hardly have been invented by the witness, viz. the letter of Mr. Coello; the prisoner's observations about his family, and request that he could inform them, if anything happened to him that night; the mention of his sister Harriet Scott (see unfinished letter, No. 9;) the complaints made by the prisoner of his step-mother, &c.

It is true that Mr. Coello has denied knowledge of any such letter as that above alluded to, but I see reason to suspect that the said denial was made, either because the document was an objectionable one, and not likely to turn up, or because the witness, who was notoriously the prisoner's intimate acquaintance, wished to help him, as far as he could.

2*nd*. Because the prisoner's request that Mr. Kiernander would inform his family, if any thing were to happen to him that night, was, clearly, substituted for the unfinished letter written by the prisoner upon the half note, No. 9.

3*rd*. Because the said witness affirmed that the prisoner entered his tent smoking a pipe and in a state of inebriety, which averments are supported by the depositions of Mr. C. Rose and Lungutram Kahar, his servant, and the production of of the pipe, by the witness, and

4*th*. Because if the prisoner had not had the loaded and capped pistol with him on the occasion in question, and threatened to slay a nigger with it, Mr. Kiernander would never, in my estimation, have been forced by his conscience to go and tell Mr. Maylark, nearly all that he has since stated, particularly as he must have seen, that such a course would cause his primary falsehood to appear.

With regard to Musst. Diljan's denial of having heard the pistol shots, or seen the prisoner, when she went out after the deceased, I would observe that the falsehood thereof is palpable. No wrapping of cloths could ever have prevented her from hearing the violent detonations of the revolver, the most loud spoken of all pistols, as those who are acquainted with it can testify; and if, as she says, she got out of the door nearly at the same time with the deceased, she must, in the bright moonlight there was at the time, have seen and recognized the prisoner, if the deceased was able to do so. Again, if she did not hear the

pistol fired, and only got up to go out when she was aware that the deceased had risen, she could not have got out of the house at the same time with the deceased, as she affirms.

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This witness was evidently determined to save the prisoner if she could, when she made the statements above discredited, but the rest of her evidence appears to be worthy of belief.

On the whole, I am constrained to say that the circumstantial evidence alone, *with or without that of Mr. Kiernander*, would be sufficient for the conviction of the prisoner; but that, taken in conjunction with the depositions given by the deceased before he died, it forms a compact mass of full legal proof of his having committed the capital offence, of which he stands accused, from which he can in no wise escape.

The collective evidence indicates that the movements and acts of the prisoner must have been nearly, as follows :—

After the conversation in the tent of Messrs. D'Cruz and Deefholts, and the receipt of the note to the station master, at about ¾ past 8, he must have gone to the hotel and staid there till about ½ past 10. He must then have returned to the Post Office and thence proceeded towards the house of the deceased, and, meeting the witness Jankee Kahar, asked whether his master was asleep. Though that witness has said before this Court, that the prisoner returned to the Post Office, he must have come back therefrom, shortly afterwards, and visited the deceased, with whom (if the said witness has spoken truly) must have been Musst. Diljan. Subsequently, he must have returned to the Hotel, and, after taking another glass of brandy and lighting his pipe, gone to Mr. Coello's room at the Post Office, possessed himself of the pistol, which he knew to be loaded and capped, and attempted to write the letter to his sister found upon the half-note (No. 9), which probably from insufficient light, he was unable to finish. He must then have thrust the pistol under his waist band, and gone, still smoking, and, by that time, nearly intoxicated, into the tent of Mr. Kiernander. It must then have been past 12 o'clock. The conversation which took place between the prisoner and the above witness must have lasted till near one, when he must have gone over to the house of the deceased, placed his shoes in the lane where they were found, crept stealthily round to the door of the inner chamber, knelt or stooped down to make sure of killing the deceased on the spot, and discharged the pistol into him when almost close to his body. Both the deceased and the woman Diljan must have jumped up, upon which the prisoner must have done the same, and fired again and again while he was being pursued by the deceased. The 2nd shot was probably let off in the house, as a fragment of the bullet discharged was found there, and the 3rd, outside, because no trace of any third bullet was discoverable ; indeed, it very

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possibly went over the house of the deceased altogether, as revolvers are always apt, from the stiffness of their triggers, to cant up their muzzles, when fired hastily and held loosely. The prisoner prevented, by the unexpected closeness and vigour of the pursuit of the deceased, from turning into the lane to get his shoes, was obliged, it would appear, to run past the Post Office, and into Mr. Carter's empty tent, where he took off and put down his hat. After panting and thinking a short time there he no doubt remembered that he must get rid of the pistol, and forgetting his hat, went down into the Trunk Road, turned up the first bazar road that he came to, ran or walked up it in his socks, as far as the small cross road that led to the next parallel bazar road, passed over by the said road, threw the pistol down on the other side to his right, and then running south to the Junction Trunk Road, went on to the Telegraph Office, where, after secreting his worn and dirtied socks, he threw himself upon the *charpoy*, from which he was taken by the Assistant Joint Magistrate. The other half of the note to the station master he kept and had forgotten it, until he found it in his pocket, on the 16th or 17th, while sitting in the verandah of the Joint Magistrate's Cutcherry, when the dangerous nature of its contents of course struck him, and he therefore at once attempted to destroy it.

It will be seen that, in the above synopsis, I have slightly adjusted and corrected the time of the several main occurrences, but I considered myself quite entitled to do so, because not one of the witnesses appears to have looked at any watch or clock except perhaps Mr. C. Rose of the hotel; there was no public *guntah* or gong near; and the only thing to mark any single hour was the departure of the Mail Train from the neighbouring Railway Station at ½ past 11 o'clock.

The Court will perceive that there is a public letter, addressed by the prisoner to a Mr. Harrigan of the Electric Telegraph Department, which was taken out of his box in Court by himself, put up with the half-note (No. 9), for comparison of the hand writing thereof with that of the unfinished letter, found on the back of the said half-note.

The fragments of the other half of the note in question (No. 10) are also with the record.

On careful weighment of all that has been stated, it is my painful duty to convict the prisoner of wilful murder, and to recommend that he be punished capitally. He is a fine young half caste man, of good intellect, and I naturally feel much distressed at his unhappy fate, but I can find no circumstance of extenuation in the case, that would bear me out in recommending him to mercy. I believe that he committed the murder, not entirely in consequence of the jealousy he felt towards the deceased, but, partly, out of a desperate desire to be removed

however violently, from the life which he was leading at the time. He evidently thought that he would escape capital punishment, and only be transported, if he succeeded in killing the deceased dead, on the spot, without the cognizance of any eye-witnesses. 1859. June 23. Case of Henry Edward Murray.

I do not believe that he was, to any extent, intoxicated, when he did the deed, for it is evident that he could plan, write, make arrangements, and run fast enough to escape from the deceased, and moreover, manage to reach the room of the Telegraph Office, in which he was found, without awakening any one there.

P. S.—The delay which has taken place in the transmission of the record, is attributable to the necessity of having the Oordoo Translation of the Foujdaree record made at Raneegunge. It was sent from this Court on the 14th ultimo and was not returned until this day. The translations made in this Court were completed on the 14th Instant.

2nd. P. S.—Mr. Wauchope must, it appears, have ascertained that the prisoner was not an European British subject, from his father, or himself, and the prisoner has not made any declaration.

Remarks by the Nizamut Adawlut.—(Present: Messrs. E. A. Samuells and H. V. Bayley.)

This case has been postponed in order to enable the prisoner to obtain the assistance of Counsel, and he has now had the advantage of being ably defended by Mr. Longueville Clarke and Mr. William Money of the Supreme Court bar.

The facts of the case as they appear on the record are as follows:—

The prisoner, Henry Edward Murray, was an artificer in the Telegraph Department and has been employed since November, or December last in the neighbourhood of Raneegunge. He had no fixed residence there, it would seem, but usually lived when in the station with a Mr. Coello, a sub-inspector of mail carts, who occupied a room in the Post Office.

The deceased Muddun Mohun Lal, a native of Etawah in the Upper Provinces, was a sub-overseer in the Post Office department, and occupied a small house about 40 yards from the Post Office.

He and Murray appear to have become intimate in the month of January last. Murray had made the acquaintance at Burhee of a prostitute, name Diljan, and renewed his connection with her at Raneegunge; but towards the end of January or beginning of February, she appears to have attached herself to Muddun Mohun Lal, who, it is stated, paid her better than Murray. Murray, she says, did not forbid her to associate with Muddun Mohun but he reproached her for abandoning him; and Mr. D'Cruz deposes that Murray told him he

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did not "much like" Muddun Mohun for having deprived him of the woman. On the 13th of February, Murray asked Muddun Mohun, according to the dying declaration of the latter, why he went with the woman; but on his replying that she was a common prostitute, and he should of course go with her if he pleased, Murray seemed satisfied and said "Very good, it is of no consequence." Muddun Mohun, however, it appears, was so far from feeling any jealousy with regard to Murray's former connection with the girl, or from wishing to keep her to himself, that he invited Murray to his house when Diljan was there, and offered to procure her for him whenever he wanted her.

On the morning of the 15th, Murray, who had accompanied Coello the preceding evening, as far as Futtehpore, on the Trunk Road, returned to Raneegunge, and at 9 A. M. went to the Telegraph Office to ascertain if there was any work for him. He remained there till 12. How he occupied himself during the remainder of the day does not appear further, than that it is stated by Diljan that he sent her a message to meet him that night, which she refused to do. In the evening he met Mr. J. R. D'Cruz, a Post Office Train Master, and accompanied him to the Railway station and thence to D'Cruz's tent, where D'Cruz, Murray, and a Train Master of the name of Deefholts dined together. After dinner, Muddun Mohun Lal, came in to pay Mr. D'Cruz's salary, and sat down with the party. Murray and he appear to have conversed on various subjects in a friendly way, and in reply to a remark of Muddun Mohun that he was going up the road next day, but would see Murray before he left, the latter offered to go and see him that night to which Muddun Mohun replied that he would be very welcome. About 8 o'clock, Muddun Mohun took his departure. Mr. D'Cruz, then asked Murray to receive some packages for him at the Railway station next day, and Mr. Deefholts at D'Cruz's request wrote a note to the station master, requesting him to deliver to Murray *three* packages which he expected from Calcutta. This note he delivered to Murray, who left the tent about ½-past 8 or ¼ to 9.

The tents of D'Cruz and Deefholts were pitched immediately to the south of the Post Office. To the South-West of these was one tent occupied by a Mr. Kiernander, and to the West of that again close to the Government road an empty tent belonging to a Mr. Carter, all these tents were in the Post Office compound close to each other. About 40 yards to the north of the Post Office was a small cutcha-house occupied by Muddun Mohun Lal. Immediately to the North-West, is the bazar in which Diljan lived, to which a narrow path or lane leads from Muddun Mohun's house, and to the north of this again, about half a mile distant from the Post Office is the Electric

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Telegraph Office, which may be reached either by the Government road leading from the Railway station to the Trunk road, or by a branch road from the Bazar. The Railway Hotel is about 100 yards, east of the Post Office, and there is a direct communication between the two by a gap in the fence.

It is not certain whether the prisoner, on leaving D'Cruz's tent, went direct to the Hotel or visited Muddun Mohun first. With the exception of Mr. Rose, all the witnesses speak conjecturally as to time. Mr. Rose says that the prisoner came to the Hotel between ½-past 8 and 9 and remained there till 20 minutes to 11, that he drank while there, a bottle of lemonade with a glass of brandy in it, and had a second glass of brandy before he left. He talked in his usual manner upon indifferent subjects and was quite sober when he went away.

Muddun Mohun Lal says in his dying declaration, that the prisoner came to him about 10, and, with reference to his having taken medicine, recommended him to go to sleep as it was past 10. The conversation would appear only to have lasted a few minutes. Muddun Mohun does not say distinctly whether Diljan was there at this time or not.

The prisoner himself says that he went to Muddun Mohun about 10; that he woke up Muddun Mohun's servant, Jankee Kuhar, and then woke his master, sat down and had some conversation with him, after which, learning that he had taken medicine and felt weak, he left him with the remark that he had better go to sleep. He declares that Muddun Mohun was then alone.

Jankee Kuhar says that he brought the woman, Diljan, to Muddun Mohun about 9, and that about 10 the prisoner came to him, while he was washing his hands after eating, and asked if his master was asleep; but that on his replying that he was, he turned back and went towards the Post Office.

Diljan says that Jankee Kuhar came for her about 10, and that about 11 she and Muddun Mohun went to sleep together. She does not mention having seen Murray.

Now it is certain that at 10, the hour which the prisoner, the deceased, and the witness, Jankee, have all fixed upon is that of this visit: the prisoner was in the Hotel conversing with Mr. Charles Rose. His visit to Muddun Mohun must then either have been before ¼ to 9 or after 20 minutes to 11. If it took place at the former hour, he must have found Muddun Mohun as he says alone. If at ¼ to 11, it seems equally clear, that he must have observed the presence of Diljan; for Jankee had brought her a considerable time before Murray accosted him, and the room in which Muddun Mohun slept is a small one. If the visit was paid before ¼ to 9, Jankee's evidence which is in the main corroborated by the prisoner's statement, must refer to a second attempt of Murray's to see the deceased. On the whole the

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probabilities are, we think, in favor of the visit having been made after the prisoner left the Hotel. It is quite possible, that he may have turned back at first, as stated by Jankee, on hearing that Muddun Mohun was asleep, and that he may afterwards have changed his mind, and entered the house without being perceived by Jankee.

The interview from the account given of it, both by the prisoner and Muddun Mohun, must have been over before 11. There is nothing to shew what became of the prisoner during the succeeding half hour. About half-past 11, he returned to the Hotel, woke up the house-bearer, Lungutram, and obtained a glass of brandy. He then lit his pipe and went away apparently quite sober. The bearer observed nothing particular in his manner.

The next direct evidence we have of his movements is that of Mr. Kiernander, which, if it is to be believed, is of great importance. He says that the prisoner came to his tent between 11 and 12; but as he had been asleep and had no means of learning the true time, this must be taken as a mere conjecture. From the particulars which he gives of the interview, and the time which elapsed between the departure of the prisoner and the discharge of the fatal shots, which he speaks to, it is evident, we think, that the visit to Kiernander's tent must have been between 12 and 1 and probably nearer 1 than 12.

Kiernander states, that the prisoner appeared when he entered his tent to be in liquor and tumbled off his chair once or twice. He had some food when in the tent and might have taken a little brandy, which remained in the bottle on the table; but Kiernander did not see him do so. He had a Colt's revolver thrust into the waistband of his trowsers and laid it on the table when he sat down to his supper. Kiernander took it up and examined it, and particularly noticed some mottled marks upon it. The prisoner talked in an excited manner, entered into his family history to Kiernander, though it would seem that he had no previous acquaintance with him; particularly mentioned his sister, Harriet, and begged Kiernander to write to her and to his father if he got into trouble or destroyed himself. He said he would shoot himself on account of his troubles and misfortunes, and subsequently declared that he would shoot "some bloody nigger." In the Sessions Court. Kiernander adds, the words "that night," but they do not appear in his first deposition before the Magistrate. He spoke of D'Cruz, Deefholts and Muddun Mohun and said, that they had injured him in his feelings about a woman, but added that he bore them no grudge. He said he had seen Muddun Mohun about 10, (in Kiernander's first deposition it is about 9 or 10) and had been very friendly with him. He remained about 20 minutes in the tent and then went away taking the pistol with

him. Kiernander offered him a bed and pressed him to stay, but he said he might be wanted for his work on the Telegraph line. Kiernander noticed that he had on a dark coloured coat, which is also stated by other witnesses to have been his dress in the early part of the night, but did not remark any other portion of his dress nor did he observe in what direction he went. In the Sessions Court Kiernander says he was quite calm when he left though the effects of the liquor had not left him. In the Magistrate's Court, however, he had deposed that "he grew worse and worse in liquor." He accounts for the discrepancy by saying that he was calmer in his manner, but that he staggered more. About 10 minutes or a quarter of an hour after he had left the tent, Kiernander heard three shots fired and presently a voice calling out "Sobba Singh, Sobba Singh, I have been shot by Mr. Murray." With a callousness, however, which has been very properly commented on in severe terms both by the Sessions Judge and the prisoner's counsel, he merely lit a cheroot, smoked it and went to sleep. His subsequent conduct we shall refer to hereafter, in connection with the question of the degree of credit to which his evidence is entitled.

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The cry which Kiernander treated with so much indifference was heard at the same time by D'Cruz, and Deefholts, though neither of them heard Murray's name "Sobba Singh, Sobba Singh, I am shot" being the words which they depose to. They both ran out immediately to see who it was, and found Muddun Mohun lying wounded in Sobba Singh's lap in the Post Office Verandah. They asked him what was the matter, and he said that Murray had shot him. They then laid him on a charpoy in the Post Office and Sobba Singh bound up his wound, while D'Cruz went for the Doctor. On his arrival about half-past one, Dr. Bow finding that a ball had passed through the abdomen of the wounded man, and that he had not long to live, summoned the assistant Magistrate who, on his arrival, took down the dying man's statement on oath. The man who first volunteered to write it proved a very bad penman and a Burkundaz was then tried, after which a Mohurrir arrived who went on with the deposition, but the assistant Magistrate thinking it would be better to have the whole declaration in one hand writing, made the Mohurrir copy what had been written, questioning the dying man as to those expressions of the first writer which were not clearly intelligible, and so slightly altering the original statement, though not in any material point. When this was finished the wounded man was so faint, that he was unable to sign and shortly after four o'clock he expired.

After mentioning his interview with Murray about 10 o'clock, Muddun Mohun goes on to say in this declaration, that he was sleeping on his charpoy with the woman Diljan

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near him when he was shot. That he sprung up* when struck by the ball and then saw Murray distinctly; that he pursued him as far as the corner of the Post Office, but then fell from exhaustion and called out to Sobba Singh. He recognized Murray also, he said, as he was running away, and supposed that he had shot him because he saw the woman Diljan sleeping with him. He said Murray had fired two shots. From a subsequent examination of the pistol, however, as well as from the evidence of Kiernander, the only person in the neighbourhood who appears to have been awake when the shots were fired, it would seem, that three barrels were discharged.

Nothing could be learnt from Diljan. She denied that she had heard any shots and said that, although she followed Muddun Mohun outside, she saw no one running away.

The prisoner was not seen again by any of the witnesses that night until he was arrested. In the long and argumentative defence which he made, he gives no clue to his proceedings after leaving Kiernander's. He merely says that he went direct to Kiernander's tent from the Hotel.

While the declaration of the deceased was being taken, Dr. Bow and Mr. D'Cruz proceeded to examine the premises in which the murder had been committed. The room in which the deceased had slept had no door, merely a door-way which opened upon a verandah. From the position of the charpoy and a subsequent examination of the course of the bullet through the body of the deceased, it appeared that he had been sleeping on his right side on the charpoy with his feet towards the door, the charpoy being placed immediately on the left hand side of the door as you enter. He had no clothes on the upper part of his person and from the scorched appearance of the skin round the wound where the bullet had entered, it was clear that the murderer had advanced into the room and had held the pistol close to the body of his victim. The ball had entered in the vicinity of the 10th rib on the left side, passed through the intestines, stomach and liver and out under the right arm pit. It was found by Mr. D'Cruz in the cotton mattrass quite whole and proved to be a conical Colt's bullet, a fragment of another bullet of the same description was found on the bed.

About 4 or 5 yards from the door of the house and in the lane or pathway which leads from the bazar to the Post Office, past the east side of the house, was observed a pair of shoes tied with black ribbon with their toes pointing towards the

* The Judge seems to have supposed, that Muddun Mohun said the prisoner had jumped up from a kneeling posture, but this is not the case. He says that he himself jumped up on being struck by the ball.

Post Office. Mr. D'Cruz recognized them as similar in appearance to the shoes which he had seen Murray wearing.

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Murray was arrested by the Magistrate in the Telegraph Office, at 5 A. M. He was lying undressed on the bed of a telegraph assistant of the name of J. W. D'Cruz, who was absent and Wright, the other assistant in the office, was not aware that he was there. He had never known him sleep there at night before, he says, though he had occasionally done so in the day-time. On being told what the charge against him, was the prisoner exclaimed "What! is Muddun Mohun dead!" "And a strange wild smile," as the Magistrate expresses it, "passed over his face." His breath smelt of liquor, but he appeared to be perfectly sober. On being ordered to get up and dress he began to search for his hat and shoes, but did not appear to know where to look for them. He was asked what shoes he had had on the preceding night and said at first, an old pair of boots of his own, and then a pair which Mr. J. W. D'Cruz had lent him. On seeing the door of Mr. Wright's room open, he slipped in there and took a pair of half boots off a basket in one corner of the room, which he declared he had worn the preceding day and replaced where he found them. Wright declared that this could not be the case, and mentions in his evidence that he had taken up these boots himself at 6 o'clock the preceding evening, with the intention of putting them on, but had laid them down again on finding they had no laces. Wright asked the prisoner what he had done with the shoes he had bought the other day, when he denied having bought any. It is clearly proved, however, by the evidence of the Chinese Shoemaker, from whom he had purchased them a few days before, that the shoes found near Muddun Mohun's house were the prisoner's shoes, and Mr. Charles Rose and several other witnesses depose to those shoes being similar to the shoes the prisoner was in the habit of wearing. Rose had an excellent opportunity of observing the shoes the prisoner had on upon the night of the murder, as the prisoner sat opposite to him at the hotel, with his feet up on a chair, and he is quite certain he had not half boots on his feet at that time, and that the shoes he did wear were precisely similar to those found in the lane. Mr. J. W. D'Cruz the telegraph assistant says, in the Sessions Court, that the prisoner bought a pair of shoes on the evening of the 15th, but this is in opposition to his first deposition, and is at variance with the prisoner's own statements and the evidence of all the witnesses who were examined on this point. The prisoner's hat was found next day in Mr. Carter's tent which, it will be recollected, was empty and in which Kiernander had told him he might sleep. It does not appear, however, whether he had this hat on when he left Kiernander's tent, or not,

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though Jankee states he wore it when he spoke to him. And Muddun Mohun unfortunately was not questioned as to the dress of the man who wounded him.

The prisoner had no socks when arrested and stated in his answer to the assistant Magistrate, that he did not know where he had lost them. They have not been found.

The prisoner was removed to the Thannah after his arrest, and Messrs. D'Cruz and Deefholts saw him in the course of the morning and spoke to him on the subject of the murder. Their accounts of the interview, however, differ widely. Deefholts deposes that the prisoner denied having shot Muddun Mohun. D'Cruz says that the prisoner remarked that the crime could not be proved against him, as there were no eye-witnesses. D'Cruz is positive that this expression was used, and Deefholts says he did not hear the whole conversation between the prisoner and D'Cruz, but the remark is inconsistent with the prisoner's total denial to Deefholts, and we cannot therefore allow it any weight.

After breakfast on the 16th, D'Cruz recollected that he had seen a pistol in Coello's possession and questioned Coello's bearer respecting it. The bearer produced a pistol case from the drawer of a desk in Mr. Coello's room. The case had been forced open and the pistol was gone. It was proved by the evidence of Mr. Coello and Mr. Maylark, that the pistol belonged to Mr. Maylark and that he had made over the case locked with the pistol in it to Coello, some days previously on his departure for Calcutta. Maylark does not recollect who were present at the time, but Coello is certain that the prisoner was there, and it appears from his evidence and that of others, that the prisoner had at all times free access to the room in which the pistol was kept. He had in fact been living there for a fortnight previous to the murder.

Mr. Maylark states that the pistol was loaded when he made it over to Coello, with five conical balls and one round ball.

The conical ball found in the mattrass of Muddun Mohun's bed, and the fragment found upon the bed corresponded with a conical bullet found in the box, and from a transverse mark on the base appeared to have been cast in the same mould.

The pistol itself was found by one Obhoy Napit on the morning of the 16th, lying partially covered by leaves at the side of a road in the bazar and not far from the house of the prostitute Diljan, who, however, it must be observed, denies that she saw the prisoner that night. It was not brought to the Magistrate for some days afterwards, Obhoy Napit having endeavoured at first to dispose of it. When the Magistrate got possession of it, he found that four barrels had been discharged, one of these, it is proved, was discharged accidentally by a person who had agreed to purchase it from Obhoy Napit.

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The pistol was recognized by Maylark as the one he had made over to Coello and sworn to by Kiernander, as the pistol which he had seen in the prisoner's possession on the night of the murder.

While D'Cruz was examining the pistol case in Coello's room, Deefholts went up to the desk and found a half sheet of blue note paper which, from the address on the back in his own hand writing "To the station master, Raneegunge," he immediately recognized as a portion of the note he had at D'Cruz's request delivered to the prisoner on the preceding evening. On the face of this paper was the following commencement of a letter :—

"My dearest and beloved sister Harriet.

"This *this* the last time you will ever *here* from me, I hope you will forgive me for not having written to you from such a long time, I was quiet."

Here the letter broke off abruptly. It is proved by the evidence of Coello and a comparison of the hand-writing with that of an admitted letter of the prisoner, that this fragment is in the hand-writing of the latter. On the afternoon of the day after the murder, while the prisoner was sitting in the Verandah of the Court-house, he was observed to take a piece of paper out of his pocket, look at it, and then tear it up, putting the fragments into his mouth, chewing them and finally spitting them out. This was mentioned to the Assistant Magistrate, and the pieces of paper were collected and examined. The word "three," and the syllables "utta" and "ge" belonging to the words Calcutta, and Raneegunge, were made out and sworn to by Mr. Deefholts as being in his hand-writing, and forming words or portions of words contained in his note to the station-master. The paper also was of the same colour and texture as that of the half sheet found on Coello's desk.

The prisoner's defence is of great length and displays considerable ingenuity, in pointing out the discrepancies and improbabilities in the witness's statements. He denies the murder in toto. He declares that the shoes found near Muddun Mohun's were not those he was wearing, but says they are similar to a pair he bought of a Chinaman, which he lost 4 or 5 days before the murder. To the Magistrate, however, he says that the person who committed the murder had probably taken the shoes from his place and put them where they were found in order to cast suspicion on him. He denies that the hand-writing on the note is his, though he admits it is not unlike. He says he must have dropped the note to the station master out of his pocket in Coello's room, and accounts for the scraps of paper which he tore up by saying, that he had picked up a piece of paper with some writing on

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it by Deefholts a few days before, and having written some indecent verses on it was anxious to destroy it. He admits having visited Kiernander after leaving the Hotel, but declares the conversation which Kiernander details to be an invention of the latter. Of the pistol he says, he knows nothing. He gives no clue to his proceedings after he left Kiernander, but says, he was so drunk that he does not know what he did with his hat and socks.

His witnesses say nothing in his favor.

The Sessions Judge convicts the prisoner of wilful murder, and, seeing no extenuating circumstances in the case, recommends a sentence of death.

The law officers of the Zillah and Sudder Courts find him guilty on strong presumption, and declare him liable, the one to *seasut*, the other to *tazeer*, both implying discretionary punishment, which may extend to death.

It now remains for us to consider what weight we shall attach to certain portions of the evidence we have noticed above, and to state generally the conclusions at which we may arrive.

The only direct evidence against the prisoner is that of the deceased Muddun Mohun Lal, and it has been argued by the prisoner's counsel that this is inadmissible, either as a deposition or a dying declaration.

The deceased's statement was not signed, and it was not made in the presence of the prisoner. There can be no doubt therefore, that it is not a legal deposition. As a dying declaration, however, we consider that it is clearly admissible. Such declarations when made in extremis are not invalidated by the absence of legal formalities. It was unnecessary to put the deceased upon his oath; but the fact of his having made a statement under the sanction of one oath can neither invalidate that statement nor alter its legal effect, so as to deprive it of its character of a dying declaration. It has been proved that the deceased was physically unable to affix his signature to the declaration, and under these circumstances we hold the attestation of the Magistrate to be sufficient.

The necessity which formerly existed for proving that when the deceased admitted his declaration, he entertained no hope of recovery, has now been done away with by the provisions of Sec. 29, Act II. of 1855. These do not absolutely conform to the Law of Scotland as stated by Mr. Morton in his excellent work on the law of evidence applicable to the Courts of this country (p. 84); for they still require that the deceased should be and should think himself at the time of making the declaration, to be in danger of impending death, which the Law of Scotland does not; but they undoubtedly assimilate to that law, and have removed most of the difficulties of the

old practice. It is said, however, in this case that we have no evidence that the deceased did think himself in danger of death; that the deceased himself does not appear to have expressed any such apprehension; and that neither the Doctor nor any of the persons present, appear to have informed him of his danger. It is certainly true that there is no direct evidence upon this point on the record; but we must hold its absence, under the circumstances of the case, to be immaterial. "It is not necessary," says Russell in his work on Crimes (Vol II. p. 761) "that the deceased should *express* any apprehension of danger, for his consciousness of approaching 'death may be inferred not only from his declaring that he 'knows his danger, but from the nature of the wound or state 'of illness or other circumstances of the case; and if it may 'reasonably be inferred from the nature of the wound the "state of illness and other circumstances that the deceased "was sensible of his danger, his declarations are admissible." Now in this case, it is impossible, we think to doubt, looking at the serious nature of the wound, the pain which we learn from the witnesses that the wounded man suffered, and his gradual sinking, that he must have been well aware not only of his danger, but of the impossibility of his recovery.

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We entertain no doubt then that Muddun Mohun's dying declaration is good evidence, and the only question with regard to it which remains, is, what reliance we can place upon the main fact which it states, viz. the recognition of the prisoner by the deceased.

It is strongly urged that the deceased may have been mistaken, that the rapidity with which the murderer fled, is evident from the fact that Diljan, who followed the deceased to the door immediately, saw no one: that the shock of the wound and the sudden awakening from sleep, must have bewildered him and that he possibly fell into error from connecting the attack with previous occurrences.

We have given these arguments our careful attention, but upon a consideration of the whole facts of the case, we are satisfied that Muddun Mohun was under no mistake. Apart from the strong corroboration which the circumstantial evidence on the case affords, we have it in evidence that Muddun Mohun and Murray were on intimate terms; that Muddun Mohun had seen Murray twice that evening and had ample opportunities of noticing his dress: that there was such bright moonlight at the time of the murder that Dr. Bow says he had no difficulty in recognizing people passing him as he drove along: that the person who fired the fatal shot must have been within little more than arm's length of the deceased, and that he fired a second shot after the deceased awoke, so that the latter must necessarily on springing up from his bed have

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had a good view of his face. We think that the features of his assailant were likely, under the circumstances, to impress the deceased strongly however transient his view of them may have been, and we consider it improbable that he could be mistaken in the dress and figure of a man he knew so well when seen outside in the bright moonlight. We are confirmed in these opinions by the facts that the deceased clearly bore no ill-will to Murray, and that he never wavered from first to last in his conviction that he was the man he had seen.

Musst. Diljan's evidence, is manifestly untrustworthy. At most, however, her evidence if we take it to be true, only proves that the view which the deceased had of his murderer when flying before him, must have been a transient one, and this in the case of a man he knew so well, was we think sufficient to enable him to recognize him with certainty.

The most important evidence after that of the deceased is Kiernander's, and it is said for the prisoner that he is proved to have told so many falsehoods and altogether to have behaved so disgracefully, that his evidence must be entirely rejected. When Kiernander was asked by D'Cruz and Deefholts on the morning after the murder, if Murray had been in his tent the preceding night, he flatly denied it and though questioned on the subject of a revolver, said nothing of having seen one in Murray's possession. He preserved this silence for several days, after which he went to Maylark and told him that his conscience would not allow him to rest without disclosing what he knew, and then mentioned Murray's visit and the circumstances connected with it, which we have detailed in a previous part of this judgment. In his dispositions before the Magistrate and the Sessions Judge again, he declares that he did not deny to D'Cruz, that Murray had been in his tent; that D'Cruz, had frightened him by asking him whether he had not lent Murray a pistol to shoot Muddun Mohun, and that he had not gone to the Magistrate at first because he expected D'Cruz would inform the Magistrate that Murray had been in his tent on the night of the murder and that he would be summoned to give evidence. These statements, it is clearly shewn, are false, and Kiernander's heartless conduct on the night of the murder has already been noticed. It also appeared that although he promised Murray he would write to his father and sister, if he got into trouble, he had never done so; and his statement that the deceased exclaimed he had been shot *by Murray* is not corroborated by the other witnesses to this part of the case.

It is evident, then, that Kiernander is not a person on whose unsupported testimony much reliance can be placed. That the prisoner was in his tent on the night of the murder, however, there is no doubt; for the prisoner himself mentions having

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gone there from the Hotel, and his pipe was found there. There is much in the conversation also which Kiernander states he held with the prisoner that could scarcely have been invented, relating, as it does, to family differences and other matters of which Kiernander appears unlikely to have had any previous knowledge; and while there are obvious motives for his first denying Murray's presence in his tent, and then seeking by a falsehood to explain away his concealment of the fact, there do not appear to be any for his endeavouring to make out a case against the prisoner. We do not see any reason to doubt, therefore, that his general account of the conversation which passed is correct, but we place no reliance on the expression he alleges the prisoner to have made use of with reference to his intention of shooting *a bloody nigger that night*, for he has given two versions of this expression, and while he says, in one place, that it was used in connection with the prisoner's remarks about Muddun Mohun, he says, in another, that no name was mentioned. His description of the pistol, which appears to be accurate, would be of importance if we could be sure that he had not seen it previous to giving his evidence; but it seems to have been found and shown to Maylark on the very day that Kiernander unbosomed himself to Maylark, and the probability, therefore, is that he had an opportunity of inspecting it then. Looking to the other evidence in the case, however, we do not see any reason to doubt that Kiernander did see a pistol in the prisoner's possession, and his evidence generally, we think, may be taken to prove that the prisoner visited him shortly before the murder, talked in an excited manner of his troubles and misfortunes, and left him in a state of partial intoxication with a pistol in his possession.

That the shoes found at the corner of Muddun Mohun's house belonged to the prisoner and were worn by him on the night of the murder, we consider to be satisfactorily established, not only by the evidence of the witnesses, but by the contradictory statements of the prisoner with regard to his shoes.

That the letter found on Coello's desk was written by him, and that the paper which he endeavoured to destroy in the Cutcherry verandah was the remaining half of the sheet on which that letter was written is also, we consider, clearly proved.

The discovery of the pistol near Diljan's house, and its identity with the pistol which had been abstracted from the desk on which the prisoner's farewell letter to his sister was found, the admitted receipt by the prisoner that night of the paper on which this letter was written, the abandonment of his hat in Carter's tent, which, it will be recollected, was pitched close to the road, his inability next day to account satisfactorily for his missing hat, socks and shoes, his betaking himself on

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the night of the murder to the Telegraph Office, though he had not been in the habit of sleeping there, his connection with Diljan, his annoyance at her abandoning him for the deceased, and her refusal to go to him on the night of the murder, are all material facts regarding which we entertain no doubt.

It has been urged that the murder may have been committed by some one else, and that steps may have been taken by the real murderer to cast suspicion on the prisoner by placing his shoes near the house of the deceased and imitating his handwriting, but there is no single fact in the case which supports such a hypothesis, while it is quite irreconcilable with many points of the evidence.

Upon the facts before us, we can come to no other conclusion than that this murder was committed by the prisoner. Had we any doubt upon the subject, the prisoner should have the benefit of it, but we have absolutely none.

It only remains for us to consider before we pronounce judgment, what weight is due to the plea which has been ably urged on the prisoner's behalf by Mr. Money, that the prisoner acted on sudden provocation when in a state of drunkenness, and that his crime, therefore, is not deserving of the extreme penalty of the law.

It is admitted that there is no such sudden heat or provocation in the case as would reduce the crime to man-slaughter, but it is said that the prisoner was evidently in a state of maudlin drunkenness and depression when he left Kiernander's tent; that he probably staggered in this state into Muddun Mohun's house, casting his shoes off in some drunken freak; and that the sudden discovery of the woman, Diljan, who had refused to come to him, sleeping with the deceased, acted upon his inflamed mind and impelled him to use without reflection the pistol which was ready to his hand. It is contended, therefore, that there was no deliberation or premeditation in the crime, and it is alleged that although the English law does not allow drunkenness to be pleaded as an excuse in cases of wilful murder, and the Judges are consequently compelled to pass sentence of death in these cases, yet the practice of the English Courts is to allow weight to the plea in recommending the sentence which is to be actually carried out. The case of Thom which occurred some years ago in Calcutta is particularly instanced, and it is said that the Judges of the Supreme Court stated, as one of the grounds of his recommendation in that case that for upwards of twenty years no man had been executed for a crime committed under the influence of intoxication. It is urged, therefore, that as this Court, unlike those of England, is vested by Law with the power of mitigating and remitting the punishment which the Law awards when it may seem equitable to do so, we should follow the practice of the Law as it prevails

in England rather than its letter, and should not record a capital sentence. 1859.

We apprehend that the statement of the learned counsel with respect to the practice in England has been rather too widely put, and that drunkenness would not be regarded there even as a ground for recommendation to mercy, unless the defendant was so far gone as not to be conscious of what he was doing, or there was at least a clear absence of premeditation and design. In America, where the question has been much discussed, owing to the distinction which the Laws of some of the states draw between different degrees of murder—the first degree including only wilful, deliberate, malicious and premeditated killing—drunkenness will not reduce the crime to murder in the second degree, unless it is such as to prove in the estimation of the Jury that the act did not spring from a premeditated purpose. "If a drunken man" says the Court in the case of Pirtle *versus* the State (2 Bennett and Heard, p.122) "commit wilful, deliberate malicious and premeditated murder, he is in legal estimation guilty as if he were sober;" and it is evident that this principle could not be relaxed without serious danger to society, for it is at all times in a man's power to intoxicate himself or to simulate intoxication. "If," says an American Judge referred to in the same work from which we have already quoted (2 Bennett and Heard, page 118) "drunkenness were to be considered an excuse for crime, there would be established a complete emancipation from criminal justice." In a case of stabbing with intent to murder (R. *versus* Markhouse 4 cox c. c. 55) where under the English statute it is necessary to prove a positive intention of murdering, and drunkenness was pleaded, it was remarked by Mr. Justice Coleridge that it is not sufficient to prove that the prisoner "was excited or rendered more irritable, unless the intoxication was such as to prevent his restraining himself from committing the act in question or to take away from him the power of forming any specific intention." To ascertain whether such a state exists "you must take into consideration the quality of spirit he had taken as well as his previous conduct. His conduct subsequently is of less importance because the consciousness (if he had any) of what he had done might itself beget considerable excitement," and it has been held in other cases of the same kind, that where a dangerous instrument is used, drunkenness can have no effect in the consideration of the malicious intent of the party.

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The power vested in this Court by Regulation XIV. of 1810, of mitigating the punishment to which prisoners are liable under the laws and regulations in force, is not a mere capricious discretion, but one which is governed by well-defined principles, and for which in every instance valid reasons must be assigned. As remarked by our late respected colleague Mr. J. R. Colvin,

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in a minute which he drew up in 1851, on the principles by which this Court is guided in inflicting capital punishment, our Regulations* require proof in cases of wilful murder of an intention to kill "either evidently or fairly inferrible from the nature and circumstances of the case," and do not recognize in such cases the English doctrine of *implied* malice. The general practice of the Court has in consequence, been to limit the extreme penalty of the law to those cases in which there is a clear and deliberate intent to kill, thus assimilating very closely to the practice of those American Courts we have noticed above. Provocation, though insufficient to reduce the crime to culpable homicide, has been frequently admitted as a ground of mitigation, and there are cases in which the Agra Court has remitted the penalty of death in consequence of the crime having been committed under the influence of *bhang*, which frequently produces a temporary insanity.

If, therefore, it could be shown, on behalf of the prisoner in this case, that he had acted in sudden heat without premeditation, that he had received some serious provocation, or that he had been so intoxicated as to incapacitate him from forming an intention, we should gladly have listened to the appeal which has been made to us. After very anxious consideration of the evidence, however, we have been unable to find any extenuating circumstances in the case.

* Sec. 75, Regulation IX. of 1793, and Clause 2, Section 10, Regulation VIII. of 1803.